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VOLUME XVI
1922

BALTIMORE, MARYLAND
THE WAVERLY PRESS
1922

Direct
5-5-1923

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THE AMERICAN POLITICAL SCIENCE ASSOCIATION

REVIEWS OF BOOKS

THE AMERICAN POLITICAL SCIENCE REVIEW is supplied to all members of the American Political Science Association.

The annual dues are four dollars a year. Single numbers of the REVIEW are sold for one dollar each.

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The American
Political Science Review

Vol. XVI FEBRUARY, 1922 No. 1

THE DEVELOPMENT OF DEMOCRACY ON THE AMERICAN CONTINENT[1]

L. S. ROWE

The year that is about to close marks the hundredth anniversary of the independence of many of the republics of the American continent. The long struggle which began in 1808, and which did not reach full fruition until the beginning of the third decade of the nineteenth century, possesses all the characteristics of a great epic; marked by a degree of devotion to the ideals of liberty and independence which will ever constitute the great heritage of the people of this continent.

Within these last twelve months we have also seen the republican system of government fully organized in some of the older monarchies of Europe and in the new and independent states established by the Treaty of Versailles. The period that has elapsed is much too short to permit of any adequate estimate of the permanence of the political systems that have been established, or of the manner of their operation. On the other hand, the development of democracy in the republics of America has extended over a period sufficiently long to make possible an inventory of its strength and weakness and some formulation of the requisites for further progress.

[1] Presidential address delivered before the American Political Science Association at Pittsburgh, Pa., December 27, 1921.

The common purposes and ideals which the political leaders in the several republics so consistently pursued during the long struggle for independence, laid the lasting foundations of the Pan American movement, which in later years was destined to play so important a part in the destinies of this continent. In fact, one of the most inspiring characteristics of the early struggles of the American republics was the spirit of coöperation and mutual helpfulness which led large groups of patriots from remote sections of the continent to endure almost unbelievable hardships in order to support their struggling brethren. Patriots from Venezuela and Colombia undertook long and arduous journeys in order to support the people of Ecuador, and groups of republican enthusiasts from Argentina and Chile braved the hardships of the Andes in order to assist Peru in her hour of need.

A century has now elapsed since these heroic struggles, and it is both fitting and helpful that we undertake an estimate of the results accomplished. This means a retrospect of the development of democracy with special reference to the conditions which have determined its growth on the American continent; the circumstances that have favored its progress and the obstacles that must be overcome in order to move forward toward the fulfilment of its higher possibilities.

Although the history of republican institutions in Central and South America has been in many respects a checkered one, it is a notable fact that, with two exceptions—and those extending over a comparatively brief period—all these nations have adhered to the republican form of organization even when the actual operation of the system was far removed from that contemplated by the founders. The record of the American republics during the century that has elapsed since their declaration of independence has made possible a more accurate study of the relation between democracy as a form of social organization on the one hand, and republican institutions as the political expression of such organization on the other.

Now that democracy has become the goal toward which the nations of the world are striving, it is difficult for us to pic-

ture the dismay, amounting almost to horror, which the term "democracy" inspired a century ago. Even to the founders of our constitutional system it was synonymous with "mob rule." Their devotion to republican institutions was accompanied by an equally pronounced antagonism to democracy. It was not until well toward the second half of the nineteenth century that it began to be apparent that the effective operation of republican institutions requires a democratic social organization and that the infirmities from which republican institutions often suffer are due to the absence of such a democratic foundation.

In fact, the problem of overwhelming importance today confronting the republics of the American continent is to bring their social organization into closer harmony with their political institutions. The wide discrepancy existing between these two elements of national life is the cause of many evils and the source of much political unrest. While the ends in view are clear and unmistakable, the measures to be adopted for their attainment are at times difficult to formulate and often even more difficult of adoption.

The first and most important lesson to be learned is that we cannot hope for the smooth operation of republican institutions as long as any considerable portion of the population remains in a condition of abject economic dependence. In so many sections of the continent, the condition of the laboring classes, especially that of the agricultural laborer, so closely approaches serfdom as to be hardly distinguishable from it. As long as such a condition of economic subjection exists, the political destinies of the country will be managed by small groups of men removed from the control of any effective public opinion, and will slowly, but surely, degenerate into oligarchy. Election laws no matter how perfect are of no avail, and it is equally futile to increase the number of elective offices in the hope that thereby the participation of the masses of the voters in public life will be strengthened. While it is comparatively easy for the student of political institutions to point out existing shortcomings, the formulation of a workable solution presents difficulties which at times seem to be unsurmountable.

There are, however, a few cardinal principles of outstanding importance which must be made an integral part of national policy in those republics in which the laboring population or any considerable portion thereof is illiterate, unorganized, and with a standard of life dangerously close to the margin of subsistence.

In the first place we must learn to distinguish between national wealth and national welfare. There is a deeply rooted belief in America and elsewhere that these two terms are synonymous, and that with the progressive exploitation of the natural resources of a country through the investment of foreign or native capital the condition of the masses is certain to improve. No one will deny that there is a measure of truth in this assumption in a country in which the laboring classes are well organized and therefore in a position to secure for themselves a fair share of the national product. But in the circumstances in which some of the republics of the American continent find themselves, with a laboring population unorganized and with a relatively low standard of life, the exploitation of natural resources is inevitably accompanied by an increasing exploitation of the laboring classes. It is true, and it is to the everlasting credit of North American enterprise in Latin American countries, that, recognizing the importance of a stable labor supply, as well as the possibility of increased industrial efficiency through better living conditions, earnest and notable efforts have been made to improve of the condition of the laboring classes. It is also true that the governments in Central and South America are today making earnest efforts toward the same end. But the road still to be traveled is distressingly long.

It is by no means a fortuitous circumstance that where labor is adequately organized, as in certain sections of Argentina and in the nitrate provinces of northern Chile, the wage scale is not only high, but out of all proportion to the remuneration received by labor in adjacent countries. Moreover, it is generally assumed that these conditions will be remedied as soon as the process of popular education has proceeded far enough to

produce an economic awakening on the part of the laboring classes. Efforts to improve popular education are not lacking; in fact real, national sacrifices are being made for this purpose, but owing to limited financial resources the advance is necessarily slow and in the meantime the present generation is suffering from all the degenerating influences of inadequate nutrition, bad housing, and unfavorable sanitary surroundings.

It would seem, therefore, that the only possible solution to this social problem, of overwhelming importance to the political future of the Latin American republics, is the determination by the governments of a minimum wage scale, both in agriculture and industry, and the elimination of the many abuses which now exist, due to the dependence of the agricultural laborer on the stores established on their estates by the great landed proprietors. If there is one lesson to be learned from the experience of a century of economic development, it is that this drastic measure is necessary as a first step toward economic emancipation, without which the great mass of agricultural laborers and even certain sections of industrial labor cannot be made a real and vital factor in the development of a virile democracy.

The importance of such a step as part of a comprehensive plan of social legislation has been greatly increased by reason of the situation which has arisen as the result of the World War. The social upheaval in Europe and, especially, in Russia, has had a far-reaching influence on the laboring classes throughout Latin America. The demand for the betterment of living conditions is becoming more and more insistent and its influence on political life increasingly apparent. Unless measures are taken to satisfy this demand, the growing discontent is certain to manifest itself in political unrest and a possible undermining of established order. Legislation of the kind referred to has therefore become, not merely a step toward social justice, but a requisite for future stability. It is, of course, true that any system of minimum wage laws must be supplemented by a comprehensive plan of social legislation designed to give the increased income of the laboring classes its greatest effectiveness in raising the standard of living. This involves the construc-

tion of laborers' dwellings by the public authorities, national or local, the improvement of recreation facilities, and, above all, the restriction and ultimate elimination of the use of intoixcating liquors, which have done so much to undermine the physical and moral welfare of the laboring classes throughout the continent.

This step once taken, a further problem confronts those countries such as Mexico and most of the other republics of Central and South America whose social system is based on great landed estates; namely, the development of a class of small landed proprietors. The problem of developing through any governmental action a class of small land owners presents enormous difficulties. It is futile either through expropriation or confiscation to break up the large agricultural holdings into small farms. Unless the agricultural population is equipped with the technical preparation for farm management, combined with a strong and abiding desire for individual ownership, all governmental effort is doomed to failure, and usually expensive failure.

The disastrous experience of Mexico under the Madero régime in the attempt to develop a class of small farmers is most instructive. We are so apt to forget that where the traditions of a people have led them to the common ownership of land, rather than individual proprietorship, as was the case with the Indians of the greater part of Mexico, the desire for individual ownership is absent and must be gradually developed. The experience thus far acquired would seem to indicate that however necessary the development of a class of small farmers may be to the further progress of democracy in the republics of Latin America, this end will only be attained through the gradual transformation of tenants into proprietors, much in the same way and by the same slow and difficult process through which increasing numbers of negro tenants in our southern states are being transformed into land proprietors.

Running parallel with these economic changes, and only secondary in importance to them, are certain political principles, the recognition of which is essential to the normal and progres-

sive development of republican institutions on the American continent.

In all the republics of the American continent—North, Central, and South America—there exists a lack of harmony between inherited political ideas and present political and economic needs. In some cases, as in Mexico and Argentina, sectional feeling, either inherited from the Spanish motherland, or developed by reason of lack of means of communication and transportation, have led to the adoption of a federal system of government, whereas manifest national needs dictate the importance and necessity of an unified, centralized, national system. It is true that in the actual operation of the federal system in both Mexico and Argentina, the national government has established a control over the respective states and provinces, which means a wide departure from the purpose and intent of the framers of the constitutional system, but this wide discrepancy between the written constitution and the actual system carries with it the severe penalty of undermining the respect for law and opening the door to serious abuses of power.

In fact, the history of federal government on the American continent during the last century raises the question whether the federal system, wherever it has been tried, is anything more than a transition stage, a compromise designed to satisfy political instincts, ideas, and prejudices inherited from an earlier period, and doomed to disappear as soon as political ideas, necessarily of slow adjustment, have adapted themselves to present economic and social needs.

In the study of the political development of the republics of the American continent, it is a matter of very great importance that students of political science analyze with much greater care than has hitherto been the case the causes of political unrest in certain sections of the American continent and that we distinguish clearly between violent changes that have a deep social significance and those revolutionary movements that represent nothing more than the selfish ambitions of a few unscrupulous leaders.

As our own history has shown, and as is shown by the history of every republic of the American continent, political impasses at times develop, for which revolution furnishes the only solution. No matter how much we may condemn violence, no matter how strongly we may preach against armed opposition to the existing order, the fact is that great social changes, such as took place in the United States during the Civil War, in Chile during the revolution of 1891, and in Mexico during the revolution of 1910, are brought about through upheavals which are usually accompanied by violence. We may look forward to a time when humanity may be able to effect such changes by the peaceful processes of constitutional evolution, but we must also recognize the fact that we cannot attain this great end until the machinery for adapting political organization to present economic and social needs functions much more smoothly and with much greater responsiveness to national needs than is the case at the present time.

A further political principle which the experience of the last one hundred years has demonstrated, and which possesses a deep and far-reaching significance in our present international situation, is that the qualities that prepare a people for self-government —respect for law, political self-control, acquiescence in the will of the majority, and willingness to use the slower processes of discussion rather than brute force in order to bring about political changes—cannot be imposed from without, but are only acquired as the result of much bitter experience and as the outcome of a slow and painful process of education.

The underlying missionary spirit of the American people often leads them to the belief that they can carry the spirit of order and self-government to less fortunate sections of the American continent, even if the agency used is the military arm of the government. While such government has always been characterized by great integrity and great ability in the execution of public works and other technical enterprises, it has always signally failed in preparing the people over which it has had control for the responsibilities incident to the management of their own affairs. This is due in part to the limitations of the military

mind, and in part to the conditions under which military governments are established.

There is a further principle which I desire to emphasize because of its great importance to the development of democracy on the American continent. Today there exists on this continent a series of irritating international disputes which are not only a menace to the peace of the New World but also a real obstacle to democratic progress. The majority of these questions are boundary disputes inherited from the colonial period. Their existence has been a constant obstacle to the normal development of republican institutions on the American continent. The presence of these international dangers has had a two fold effect on domestic institutions. They have in the first place diverted national attention from the pressing social problems upon the solution of which any real advance in democratic organization depends, and in the second place they have diverted an altogether undue share of the national income to military and naval purposes, thus injuring such fundamental services as public education, sanitation, public works, and other productive enterprises. There is no international question now confronting the American republics in their relation with one another that cannot readily be solved through the orderly processes of an international tribunal, and until they are thus settled they will present a serious obstacle to the solution of pressing domestic problems, to the development of a normal, enlightened and controlling public opinion and to the further advance of democracy.

MONTESQUIEU AND DE TOCQUEVILLE AND CORPORATIVE INDIVIDUALISM

WILLIAM HENRY GEORGE

Article 16 of the Declaration of the Rights of Man and the Citizen, prefixed to the French Constitution of 1791, reads as follows: "Every society in which a guarantee of rights is not assured nor a separation of powers determined does not have a constitution." Without question the men of 1789 had come under the influence of Montesquieu as well as of John Locke. It is true that a separation of powers is to be found in the *Two Treatises of Government;* but that doctrine is set out in bolder relief and more sharply defined by Montesquieu than by Locke. However, the men of 1789 took only one half the teachings of Montesquieu; the other half they rejected. The exclusive, oligarchical, tyrannical spirit of the corporations of the ancient régime, the abuse of the principle of aristocracy—privileges without services, as Taine puts it—the growth of the spirit of equality as a result of the industrial revolution, all set men stoutly against a "corporative" (in contrast with a pulverized) structure of society. Rousseau, Turgot and the Physiocrats demanded a leveling of hierarchized society: the mountains must be brought low, the valleys filled up and a highway made for the plain man to walk thereon. It was only with the Restoration that the value of an aristocratic element—from Montesquieu's point of view a corporative element—came into prominence. It was widely discussed during that period, and Montesquieu was the authority of the day.

Of the two phases of Montesquieu's thought—a separation of powers and a corporative foundation—the former has survived in current political philosophy. It was the phase selected by the men of 1789, and as progress in democracy from 1814 has been in a sense a return to the early days of the French Revolu-

tion, it was but natural and inevitable that the first phase should survive to the exclusion of the second. This prevalent view is expressed by Mr. Ernest Barker as follows: "A division of functions of government is thus characteristic of Montesquieu: it is only a secondary consideration that the division is a division among different classes."[1] On the other hand, a brilliant, although somewhat paradoxical, French academician, Émile Faguet, who is not without leanings toward aristocracy and therefore capable of orienting himself toward Montesquieu's point of view, maintains that "the central point and vital knot of Montesquieu's political conception" is his idea of a hierarchized, corporative society made up of "*corps intermediares;*" and he quotes from *L'Esprit des Lois* to sustain his contention.[2] Faguet's interpretation is important. Montesquieu does insist that powers intermediate, subordinate and dependent are necessary to a monarchy. The subordinate, intermediate power most natural is that of the nobility. In a monarchical government power is not applied immediately, as Montesquieu points out: the monarch tempers it in the giving. He makes a distribution of his authority. The nobles should form a body (*corps*) which should have the right to arrest the enterprises of the people, as the people should have the right to arrest those of the nobles.

It is not affirmed that Montesquieu's separation of powers is necessarily linked to his division of classes. In its broadest application his doctrine is that of power limiting power so that sovereignty shall not be in the hands of any man or party, but in law and reason. It is adaptable to republics as well as to monarchies. But there can be no doubt that in Montesquieu's thought a division of powers naturally presupposes a division of classes, for he had in mind England. And even his doctrine of democracy is corporative in that sovereignty resides in "*le peuple en corps.*" "I have said," to quote from *L'Esprit des Lois*, "that the nature of republican government is that the people in body, or certain families would have the sovereign

[1] Barker, *Political Thought of Plato and Aristotle*, p. 484.
[2] Faguet, *La Politique Comparée*, p. 46.

power."[3] The cast of Montesquieu's legal mind was essentially corporative.

So long as society was pulverized as a result of the French Revolution the half of Montesquieu's political creed lay in the discard. But when syndical chambers and mutual aid societies in France began to give to society "bodiness," the neglected half was reclaimed and the idea of intermediate bodies as a check on power sprang up. The first publicist in France to make an adaptation of Montesquieu's doctrine to the new day of social and political equality, and also of industrial group life, was De Tocqueville.

The contribution to political theory made by De Tocqueville consists in his comparison of the corporative society of the ancient régime with the new, individualized and democratized society of America, and the deduction therefrom of certain conclusions applicable alike to America and to Europe. Two things are perfectly plain: De Tocqueville had studied profoundly the structure of society before the French Revolution, and he was well versed in Montesquieu. With this intellectual equipment he went to America to study on the ground the new democracy at work. He found on the one hand a pulverized society—isolated individuals striving after equality—and on the other a centralizing tendency gravitating toward despotism. It was precisely what the French Revolution had produced by the destruction of all corporative, group life—territorial and professional. Isolation and despotism were the fruit of revolutionary planting. Individualism and Jacobinism, Locke and Rousseau, had met and kissed mutually. The remedy, he thought, lay in a revival under a new form of the secondary bodies of the ancient régime—a reintroduction of a modified corporative society even with a public law status.

The outstanding feature of American democracy De Tocqueville found to be equality of conditions: "Among the new objects which, during my sojourn in the United States, have attracted my attention none has more forcibly struck me than the

[3] Montesquieu, *L'Esprit des Lois*, bk. III, ch. 2.

equality of conditions."[4] That he had in mind a certain economic and social equality as well as a political one is shown by his stress upon universal leveling, illustrated by impoverishment of the rich and enrichment of the poor. According to his view America had reached an equality almost complete. The law of succession had ordained an equal sharing of the goods of the father among his children, and fortunes had become equal. Equality of conditions was a fact of the social state in America, as De Tocqueville viewed things, and one which had to be understood if her political institutions were to be explained, because the social state, he thought, was the cause of the most of the laws, customs and ideas which regulate the conduct of nations. In the light of De Tocqueville's emphasis on equality of conditions it is difficult to comprehend why Henry Michel should limit De Tocqueville's doctrine to political equality. Doubtless De Tocqueville's primary interest was in equality of rights—political rights—for he is continually comparing democracy with aristocracy; but the equality he saw went deeper, he thought, than political rights: it was social equality. "*Les biens nouveaux*" were a result of the type of equality he saw.

But equality conceals two dangers, anarchy and servitude. Anarchy easily results from isolation and independence: "Equality which renders men independent one of another leads them to contract the habit and taste of following in their individual actions only their own will. This entire independence, which they enjoy continually as regards their equals and in the affairs of private life, disposes them to consider with a discontented eye all authority and suggests to them soon the idea of political liberty"[5] which can be pushed to anarchy. Out of the same condition of isolated independence, despotism and servitude can issue. Individuals without a bond of common interest soon forget the common good, and all is left to the state which in time becomes an administrative bureaucracy: "When conditions are equal each voluntarily isolates himself within himself

[4] DeTocqueville, *Démocratie en Amerique*, (15me ed.), tome I, introduction. p. 1.

[5] *Ibid.*, tome III, pp. 472–73.

and forgets the public."[6] The drift is a natural one: each relies upon his own resources and becomes engrossed in his own affairs, and abandons the care of public matters to the representative of collective interest—the state. In short it is easy in a pulverized society, so De Tocqueville thinks, to found a government unique and all-powerful: the instincts suffice. Ignorance coupled with equality completes the process: "The concentration of powers and individual servitude will increase therefore among democratic nations not only in proportion to equality but also in proportion to ignorance."[7] The fundamental cause of it all was the disappearance of secondary bodies and with them local liberties. The state would suffer no intermediary between itself and its citizens. Local authorities were vanishing or falling under central authority. All the privileges of the lords, the liberties of cities, the provincial administrations, had been destroyed or were in the process of being destroyed. As a result the state had taken to itself all power and activity—charity, education and a large part of industry. Only the state inspired confidence because it alone seemed to have force and duration. Such is De Tocqueville's analysis of democratic despotism.

To be sure such despotism is enlightened; but it is not the less despotic. It does come from below rather than from above: but that only renders it more insidious. It is the logical result of narrow, egoistic individualism. Arising out of the people, democratic despotism works for the good of the people, De Tocqueville noted; but it wishes to be the unique agent and the sole arbiter. It is the shepherd and they are the sheep. It is the teacher and they are the pupils. It is the rulers and guardians of Plato's *Republic*, and they are the passive, inert citizens who form part of the state but from whom nothing is expected save obedience. This popular despotism is compatible with the exterior forms of liberty and can exist even in the shadow of the sovereignty of the people.

In a democracy it is only by association, De Tocqueville

[6] DeTocqueville, *Démocratie en Amerique*, tome III, p. 418.
[7] *Ibid.*, tome III, p. 490.

reasoned, that citizens can resist central power. But the principle of association was suspected both by the people and by the government. The power and duration of small, private societies astonished and disturbed the people: "All these associations which are born in our day are, moreover, so many new persons of which time has not sanctioned the rights and which enter the world at an epoch when the idea of private rights is feeble and when social power is without limits; it is not surprising that they should lose their liberty on being born."[8] So that over against isolated individuals one found only strong, centralized and paternalistic power. It is precisely what Rousseau had wished to see.

The problem now becomes increasingly clear: "How to resist tyranny in a country where each individual is feeble and where individuals are not united by any common interests?"[9] The solution is to be sought in an organization of social forces capable of resisting despotism, not unlike what was found in the aristrocacy of the ancient régime. "Almost all peoples who have acted with vigor upon the earth, who have conceived, followed and executed grand designs, from the Romans to the English, were directed by an aristocracy, and wherein is that astonishing? That which is the most fixed in its views is aristocracy. The mass of the people can be led away by its ignorance or its passions; one can surprise the spirit of a king and make him vacillate in his projects; moreover a king is not immortal. But a body of aristocracy is too numerous to be won over, too few to cede easily to the intoxication of unreflected passions. A body of aristocracy is a man firm and enlightened who never dies."[10] "I shall not speak of the prerogatives of the nobility, of the authority of sovereign courts, of the right of corporations, of the privileges of provinces which in deadening the blows of authority maintained the spirit of resistance in the nation."[11] The grave defect of the Revolution was its love of absolute

[8] DeTocqueville, *Démocratie en Amerique* tome III, p. 510.
[9] *Ibid.*, tome I, p. 159.
[10] *Ibid.*, tome I, pp. 105–106.
[11] *Ibid.*, tome II, p. 253.

equality and its hatred of every semblance of corporative society. "This particular form of tyranny that is called democratic despotism, of which the Middle Ages had no idea, is already familiar to them. No more hierarchy in society, no class demarcation, no fixed gradations: one people composed of individuals almost alike and entirely equal, that confused mass recognized as the sole, legitimate sovereign, but carefully deprived of all the faculties that could permit it to direct and even watch, itself, its own government."[12]

To De Tocqueville the Revolution had been negative; it had torn down but had not built up. In breaking to fragments the society of the ancient régime it had not taken the trouble to save from the wreckage what was valuable: "We have abandoned what the ancient state could present of good, without acquiring what the actual state could offer that is useful; we have destroyed an aristocratic society and we rest complacently in the midst of the *débris* of the ancient edifice and we seem to wish to remain here forever."[13] The part of sense, he advocated, would be to adopt what in the modern régime corresponded to the secondary powers of the ancient régime. It would be an artificial adaptation and a difficult one to make; but therein lay the only hope. Because it is impossible to reconcile political liberty with a pulverized society. Political institutions are related to the structure of society, and liberty cannot be found in a society polarized about the individual and the state. There must be created, De Tocqueville insisted, "*pouvoirs secondaires*" and free associations which can struggle against tyranny without destroying order. It is deliberative assemblies, powers local and secondary, and other counterweights which alone can balance central power. Rights that have been wrested from classes, corporations and men should have served to erect upon a base more democratic "*nouveaux pouvoirs secondaires.*"[14]

It should be stated at once that De Tocqueville did not favor a reintroduction of classes and castes that the Revolution had

[12] De Tocqueville, *L'Ancien Régime*, (6me ed.), p. 240.
[13] De Tocqueville, *Démocratie en Amerique*, tome I, p. 15.
[14] *Ibid.*, tome III, p. 498.

destroyed. Feudality as such had its faults. "I firmly believe that it is not possible to found anew in the world an aristocracy; but I think that private citizens in associating can constitute beings very opulent, very influential, very strong—in a word *personnes aristocratiques*."[15] In that manner, he thought, could be obtained several of the advantages of aristocracy without its injustices and dangers. Such associations, he held, could not be swerved to suit one's pleasure or oppressed in the shadow, and they could defend the rights of individuals against the unreasonable demands of power and save common liberties. It is especially in democratic nations that such associations are essential. In aristocratic nations "corps secondaires forment des associations naturelles qui arretent les abus de pouvoir."[16] If in democratic countries individuals cannot create something resembling these, De Tocqueville reasoned, there can be no protection against tyranny. Therefore, to De Tocqueville, the right of association was almost as inalienable from its very nature as individual liberty.

Thus the problem of liberty resolves itself into the establishment of secondary powers. Under the ancient régime there was more liberty than there is today, De Tocqueville believed, but it was irregular and intermittent, limited, and did not furnish all citizens with the natural and necessary guarantees. But it was fecund. It conserved originality and cultivated grand and glorious virtues. By its fruits it was justified. Modern liberty fails because of isolation. There is no attachment to class, caste or family that in the ancient régime drew citizens together in common action. There is no linkage of individuals. It is necessary to devise something, therefore, which can replace the old nobility which was at once a center of common interest and a force to resist tyranny. There is but one way—that of association: "In place of entrusting to the sovereign all the administrative powers taken from corporations and nobles, one can commit a part to *corps secondaires* temporarily formed

[15] DeTocqueville, *Démocratie en Amerique*, tome III, pp. 529–30.
[16] *Ibid.*, tome II, pp. 38, 39.

from private citizens; in that manner the liberty of individuals shall be more sure without their equality being less."[17]

Political and administrative decentralization can be counted upon, therefore, in De Tocqueville's scheme, to break the force of despotism. America, he thought, had discovered the secret in associations, voluntary and permanent. No other country had made so much of the principle of association as America. In some states he found counties with elective, representative assemblies with the power of taxation. To him they were veritable legislatures. Local institutions, he pointed out, are useful to all peoples, but countries where the social state is democratic have a more real need of them than others. They are a guarantee against an excess of despotism; they temper the rigors of absolute power. Local liberties break administrative despotism.

Other bulwarks of liberty, according to De Tocqueville, are a free press and a judiciary power. Servitude cannot be complete if the press is free. To be sure, De Tocqueville qualifies his regard for a free press by saying that he loves it more for the evils it prevents than for the good it does. The judiciary, he thought, was always the protector of the oppressed. The force of the tribunals has always been the greatest guarantee of individual independence and especially in a democracy, for there the rights and interest of individuals are in peril if the judiciary is not strong.

But the state must not be weakened to the point of helplessness, De Tocqueville affirms. It is necessary and desirable that the central power be strong. It should not be rendered feeble or indolent, but only it must be prevented from abusing its force. It is necessary to fix limits to social power; they should be extensive but visible and immobile. Thus there is no tendency in De Tocqueville toward the disintegration of social power so often noted in atomic individualists. Nor is he socialistic. His individualism is "corporative"—a strong central power limited and checked by a distribution of authority among

[17] DeTocqueville, *Démocratie en Amerique*, tome III, pp. 528–29.

secondary bodies. It is administrative deconcentration and political decentralization.

Verily this is the gospel according to Montesquieu. De Tocqueville's angle of approach, namely, that the social state is the cause of the greater part of the laws, customs and ideas regulating the conduct of nations, is that of Montesquieu. The first chapter of *Démocratie en Amerique*, entitled "Exterior Configuration of North America" is suggestive of book XIV (on climate) of *L'Esprit des Lois*. De Tocqueville's observation that democracies tend toward equality coincides with that of Montesquieu: "the love of democracy is that of equality."[18] De Tocqueville's appreciation of aristocracy as a means of dividing power and as a consequent bulwark of liberty is a reflection of Montesquieu. The "*corps intermediaires*" of the *Démocratie en Amerique* resemble the "*pouvoirs intermediaires, subordonnes et dependants*" and the "*canaux moyens par oi coule la puissance*" of *L'Esprit des Lois*.[19] The end is the same in the thought of both writers, namely, to guard against the power of momentary and capricious will which is incompatible with stability and fundamental law. The ultimate purpose of both is to break the force of centralized authority. And the means in both cases is the same—by a disposition of things, ("*disposition des choses,*")[20] to cause an arrest of power by power. Certainly in both instances that "disposition of things" was interpreted to include a corporative structure upon which a division of authority might be based. It is extremely doubtful if the separation of powers bulked any larger in Montesquieu's thought than the disposition of things which would facilitate that division. And De Tocqueville followed closely in his steps.

From the point of view of the new doctrine of the state—founded in part on professional jurisdictions—the contribution of De Tocqueville is highly important. Such a state presupposes a society composed of groups juridically recognized and accorded a public or semi-public law status. Isolation can no longer

[18] Montesquieu, *L'Esprit des Lois*, bk. v, ch. 3.
[19] *Ibid.*, bk. ii, ch. 4.
[20] *Ibid.*, bk. xi, ch. 4.

exist; a new hierarchized society shall have come again. And it is precisely that type of society that De Tocqueville considered fit for political liberty. He reasoned thus: there was political liberty under the ancient régime; there is a tendency in democracies toward political despotism; the solution lies in the establishment of a social state more akin to that of the ancient régime, embodying its good features and discarding its bad ones. Upon a social structure of that kind, De Tocqueville was convinced, institutions of political liberty could be reared.

De Tocqueville's logic and even his expressions would lift his secondary bodies to a public law status. They would be depositories of power taken from instruments of public law under the ancient régime, notably the aristocracy. And even the corporations, whose powers would now descend to the new secondary bodies, had at times functions that implied what we should today call a status in public law. The *corps des métiers* of the time of Saint Louis performed the public duty of guarding the city by night. Sixty men each night, chosen by trades, assembled at the Châtelet to receive instructions and then repaired to their respective posts where they kept watch until the break of day. It was called the *guet des métiers*, and the trades were spoken of as owing the duty of watch. But De Tocqueville is explicit. He would decentralize and deconcentrate administration, using his secondary bodies as depositories of administrative power. Necessarily they would have to be instruments of public law. And it is this public law status of associations that differentiates the school of corporative individualism from the school of atomic individualism.

Thus, logically, it is not a far cry from De Tocqueville to administrative syndicalism. The basic doctrine of economic federalism is that professional groups should receive a public law status and a share in administration. Already the universities of France are what might be termed "secondary bodies" with an autonomy almost complete. The state has begun here a professional deconcentration that might be applied to other branches of administration such as post offices, railroads and public works in general. Let a group of *syndicats* be formed with

official recognition; let them be assigned certain administrative functions; let them be given a patrimony and be held to accountability. If that were accompanied by a territorial decentralization there might be revived a corporative society and local liberties that Montesquieu prized so highly. De Tocqueville sees the possibility. And perhaps syndicalists might be brought to accept the type of a state which he envisages. They represent a protest against centralized, unitary and authoritative political control. So does De Tocqueville. They see no remedy save destroying that which offends. De Tocqueville, better versed in history, points out that a corporative society can bear a strong government without fear, and that the way is not to destroy but to build up. A wise administrative syndicalism might render the syndicalists' protest without substantial foundation in fact.

CONSTITUTIONAL LAW IN 1920–1921. I

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1920

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The work of the court last term is chiefly notable for its amplification of certain important results of the preceding term. Thus, the final objection to the validity of the Eighteenth Amendment was refuted; the last great question touching the meaning of the word "income" in the Sixteenth Amendment was answered; the emergency powers of government in war time were brought into contact with more usual sources of public authority—this in the rent law cases; and some minor phases of the problem of freedom of speech and press were disposed of. However, in two cases, both of much interest to the political scientist, somewhat novel questions of national power were raised; and in neither was a certainly final solution offered. Questions of state power were again of decidedly subordinate significance and interest.

A. QUESTIONS OF NATIONAL POWER

I. REGULATION OF SENATORIAL AND CONGRESSIONAL ELECTIONS.

One of the two cases referred to above as of special interest to the political scientist was that of Newberry v. United States,[1] in which the court set aside the conviction of Newberry, at present United States Senator from Michigan, and a hundred and thirty-four other defendants, for violation of section 8 of the federal Corrupt Practices Act of June 25, 1910. The act in question forbade any candidate for representative in congress or senator of the United States to give or cause to be given any sums in excess of certain designated amounts "in procuring his nomination and election." Five of the justices decided that the act, so far as it applied to the processes of nomination to office, exceeded the power of Congress in the year 1910, although Justice McKenna

[1] 256 U. S. —, decided May 2.

reserved the question of the power of Congress under the Seventeenth Amendment, which has since been added to the Constitution. The other four justices asserted the power of Congress to govern nominations to the House of Representatives and Senate in the way attempted by the act, but were for setting the conviction aside on account of reversible errors in the trial judge's charge to the jury.

Justice McReynolds, in what is rather misleadingly called the "opinion of the court," bases his argument against the act upon three propositions: First, that the only possible source of the power claimed for Congress is Article 1, section 4;[2] second, that the power thus conferred is the power to regulate the "manner of holding elections," not the power to regulate elections generally; third, that "election" in the sense of the Constitution means simply "the final choice of an officer by the duly qualified electors"—a proposition which is based on a careful collation of the passages of the Constitution in which the term is employed. That Congress may pass all laws "necessary and proper" for carrying its power to regulate "the manner of holding elections" into execution, Justice McReynolds of course admits; and as an instance of such a law he points to the Act of February 14, 1899, directing that voting for members of Congress be by written or printed ballot or by voting machine.[3] But, he continues, even if it be "practically true that, under present conditions, a designated party candidate is necessary for an election—or preliminary thereto—nevertheless his selection is in no real sense part of the manner of holding election. This does not depend upon the scheme by which candidates are put forward. Whether the candidate be offered through primary, or convention, or petition, or request of a few, or as a result of his own unsupported ambition, does not directly affect the manner of holding elections. Birth must precede, but is no part of either funeral or apotheosis."

Refutation of Justice McReynolds was essayed by both the Chief Justice and by Justice Pitney, the latter speaking also for Justices Brandeis and Clarke. "Why," asks Justice Pitney, plunging to the heart of the issue, "should 'the manner of holding elections' be so nar-

[2] "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

[3] For cases involving similar legislation, see Ex parte Siebold, 100 U. S. 371; ex parte Clarke, 100 U. S. 399; ex parte Yarborough, 110 U. S. 651; re Coy, 127 U. S. 731; United States v. Mosley, 238 U. S. 383.

rowly construed?" It relates, he contends, not to a single isolated event, but to "a complex process," nothing less, indeed, "than the entire mode of procedure" by which the popular choice is finally arrived at—all of which is valid reasoning enough, even if not entirely persuasive. But a little later he shifts his position and, assuming the very point to be proved, namely, that Congress has the power to regulate elections generally, proceeds to argue that in view of their vital connection today, elections even in the sense of "the single and definitive step described as an election at the time" the Constitution was adopted, cannot be effectively regulated independently of the processes of nomination to offices, wherefore, under the "necessary and proper" clause taken in connection with Article I, section 4, Congress may as to senators and representatives regulate both.

This clearly begs the question. The defect, however, is remedied when, passing from Article I, section 4, he invokes the much broader power of the national government "to legislate through a Congress consisting of a Senate and House of Representatives chosen by the people, —in short, the power to maintain a law-making body representative in its character." He continues as follows: "The passage of the Act under consideration amounts to a determination by the law-making body that the regulation of primary elections and nominating conventions is necessary if the Senate and House of Representatives are to be, in a full and proper sense, representative of the people." In other words, he finally bases his case—and the same is true of Chief Justice White—upon what may be called the self-preservative powers of the government, although in this connection too he relies in part on the "necessary and proper" clause, remarking: "It would be tragic if that provision of the Constitution which has proved the sure defense of every outpost of national power should fail to safeguard the very foundation of the citadel."[4]

[4] It may be argued perhaps, that the specific delegation of power made by Article I, section 4, precludes the assumption of a broader power inherent in the national government. But the answer is that, in form, Article I, section 4, is primarily a delegation of power, not to Congress, but to the states; and as both Chief Justice White and Justice Pitney point out, if Congress can not regulate the nomination and election of senators under Article I, section 4, then, of course, neither can the states. Nor, Justice Pitney continues, can the states claim such power to be among their reserved powers. "The election of senators and representatives in Congress is a federal function; whatever the states do in the matter they do under authority derived from the Constitution of the United States. The reservation contained in the Tenth

Altogether, the merits of the question are somewhat divided. In his reading of Article I, section 4, Justice McReynolds remains unanswered and probably unanswerable. But his assumption that this is the exclusive basis of the power of Congress to enact laws touching the choice of senators and representatives seems untenable. The national government is after all the national government, with all that that imports; it is a government of the people, and it has the power to safeguard the purity of the wellsprings of its authority. It would be strange indeed if the government which is vested with the duty of guaranteeing a republican form of government to the states could not adopt the measures which are necessary to guarantee itself the same kind of government.[5]

II. THE FEDERAL FARM LOAN ACT

There is an old saying about "the tail wagging the dog." It is well illustrated in the result arrived at in Smith v. the Kansas City Title and Trust Company,[6] in which was sustained an act of Congress establishing

Amendment cannot properly operate upon this subject in favor of the state governments; they could not reserve power over a matter that had no previous existence; hence, if the power was not delegated to the United States, it must be deemed to have been reserved to the people, and would require a constitutional amendment to bring it into play,—a deplorable result of strict construction." Justice McReynolds, on the other hand, emphasizes the numerous points of contact of the national with the state government and the frequent dependence of the former upon the latter. But by way of comment, it should be pointed out that wherever this dependence exists it is specifically provided for by the Constitution. Chief Justice White seems to argue in one place that even if the act of 1910 was invalid when enacted, the defect had been cured by the subsequent adoption of the Seventeenth Amendment; but a careful examination of his language makes it probable that he was arguing only that the amendment should be regarded as interpretative of the original Constitution. The precise effect of the decision in the case at bar on the Corrupt Practices Act remains a matter of some doubt, especially in view of Justice McKenna's isolated position. It should be carefully noted, however, that the underlying principle of Justice McReynolds' opinion withholds from Congress not simply the right to govern nominations to the office of senator or representative in Congress, but all power concerning any of the preliminaries of the single definitive act of their election.

[5] Art. IV, sec. 4: "The United States shall guarantee to every State in this Union a republican form of government," etc.

[6] 255 U. S. 180. The case has some of the earmarks of a moot case, and Justice Holmes, in a dissenting opinion, in which Justice McReynolds concurred, contended that it was not one "arising under the Constitution or laws of the United States," within the meaning of section 24 of the Judicial Code, under which the

a system of banks for the purpose of loaning money to farmers on special terms and exempting them from taxation, federal, state, and municipal. One hundred years ago it was ruled in the famous case of McCulloch v. Maryland that the national government could incorporate a bank to act as its fiscal agent and exempt it from taxation, even though the capital stock of such bank was largely owned by private persons and its principal business was that of private banking; and this ruling was later availed of to justify the establishment of the national banking system, which quite recently was reorganized under the Federal Reserve Act of 1913. It was, however, alleged against the Federal Farm Loan Act, that far from establishing a fiscal agent for the government, with the functions of a private bank incidentally attached thereto, it did exactly the reverse. The court held, none the less, "that the creation of these banks and the grant of authority to them to act for the government as depositories of public moneys and purchasers of government bonds, brings them within the creative power of Congress, although they may (*sic*) be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest."

The decision is beneficial, but rather insecurely grounded. The use made of the farm loan banks as fiscal agents of the national government is an obvious pretext, insufficient to hoodwink the fondest complacency. Nor is the court's answer that, "when Congress acts within the limits of its constitutional authority, it is not the province of the judicial branch of the government to question its motives," more than a technical evasion, since the question is whether Congress was acting within the limits of its constitutional authority. And in this connection we are reminded that in the very act of sustaining the national authority in McCulloch v. Maryland, Marshall gave warning that, "should Congress . . . . under the pretext of executing this power, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal . . . . to say that such an act was not the law of the land."

The court might have taken a somewhat broader view of the question raised by the Farm Loan Act. It might have considered the act, not

appeal was taken. Justice Day, speaking for the majority, answered with Marshall's definition of this phrase in Cohens v. Virginia, 6 Wheat. 264, 379: "A case . . . . may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends upon a construction of either." Justice Brandeis took no part in the consideration of the case.

in relation to the needs of the government but rather in relation to its duty, to wit, that of making a beneficial exercise of its powers. Through the federal reserve system, the constitutionality of which none has challenged, the government is custodian today of a vast proportion of the credit of the country. Is it not, then, vested with the duty of making credit available on reasonable terms to meet the widespread interests of the people of the United States? In other words, the government is vested by the Constitution with the power of taxation, the power to coin money, the borrowing power, etc., and as a means "necessary and proper" for carrying these powers into execution it has chartered banks and organized them into a system which largely controls the indispensable service of affording credit to the community. Certainly, then, it may take the further step and provide agencies for the proper discharge of this office. In First National Bank v. Fellows[7] it was held that Congress could authorize national banks to exercise the powers of trust companies, that service today being a usual one for banks to perform. Similarly, the federal farm loan banks are to be regarded as constitutional, not because they are themselves fiscal agents of the national government, but because they are part and parcel of the national banking system as a whole, and enable it to perform the service which modern conditions require that it should perform.

But indeed the decision might have been placed on an even broader basis, that namely of the power of Congress to raise revenue to provide for the "general welfare." For if Congress can appropriate money for child welfare work, as by the recent Sheppard-Towner Act, what is to hinder it from loaning money for agricultural purposes; and if it can do that, why may it not, under the "necessary and proper" clause, create a system of banks as a convenient agency for this work?[8] Apparently, however, the court did not like to face the socialistic implications of such reasoning, and so it took the more roundabout route.[9]

[7] 244 U. S. 416.

[8] Mr. Hughes' brief in the case follows this general line of reasoning. As a matter of fact, the recent extension of life granted to the War Finance Corporation, for the purpose of making agricultural loans, can rest on no other foundation. That Congress is not confined in making appropriations to "cases falling within the specific powers enumerated in the Constitution" was recognized by Story (*Commentaries*, sec. 991). The expansion of the field within which congressional appropriations occur is sketched by H. L. West, in his *Federal Power, Its Growth and Necessity*, pp. 97–113.

[9] Another case involving Congress' fiscal powers was that of Baender v. Barnett, 255 U. S. 224, in which it was argued for plaintiff in error that Article I,

III. INCOME TAXATION

1. Taxation of Gains from Sales of Property

The Sixteenth Amendment received additional elucidation of an important character in a series of cases headed by Merchants Loan and Trust Company v. Smietanka.[10] The great question at issue in all these cases was whether the gains from a single isolated sale of personal property which has appreciated in value through a series of years but subsequently to the going into effect of the Sixteenth Amendment on March 1, 1913, is "income" within the meaning of the amendment. Thus in the case just mentioned, one Ryerson had died in 1912, leaving certain shares of stock which on March 1, 1913, were worth some $500,000, and which were sold early in 1917 at an advance of more than $700,000. Was the latter sum properly to be treated as "income" for the year 1917? That the act of Congress so regarded it was plain; but was the act of Congress in that respect constitutional?

The court held that it was. To the argument that such a gain was really an accretion of property, Justice Clark, speaking for the majority, responded with the definition of income which had been arrived at earlier by the court in the interpretation of the Corporation Excise Tax Act of 1909,[11] which had been summed up by Justice Pitney in Eisner v. Macomber, in the following words: "Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through the sale or conversion of capital assets."[12] Nor would the court admit that the gain from capital realized by "a single sale of property," as in the case before it, was essentially different from the gains "realized from sales by one engaged in buying and selling as a business," for instance, a merchant, a real estate agent, or broker. The distinction, said Justice Clarke, was "interesting and ingenious," but the argument in its support "fails to

section 8, clause 6 of the Constitution, authorizing Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States" was a limitation as well as a grant of power. The argument was easily disposed of by the case of United States v. Marigold, 9 How. 560.

[10] 255 U. S. 509.

[11] See Straton's Independence v. Howbert, 231 U. S.; Hays v. Ganley Mountain Coal Co., 247 U. S. 189; United States v. Cleveland, C. C. and St. L. R. Co. 247 U. S. 195.

[12] 252 U. S. 189, 207. For a review of Eisner v. Macomber, see this *Review* for November, 1920 (Vol. 14, pp. 635–41).

convince us that a construction should be adopted which would, in a large measure, defeat the purpose of the Amendment."

Unquestionably the court has avoided an alluring pitfall. For what it was invited to do was really to contract the definition of income as "gains" to a definition of income as "earnings," which would have brought about again very much the situation which the Sixteenth Amendment was designed to correct. Yet it must in candor be admitted that the court's achievement reposes rather upon its official authority than upon its logic, which for the most part consists simply in crying down "the refinements of lexicographers or economists" and crying up "the common understanding" of the term income. But it is submitted that if anything is not income in the common understanding, it is an increase in the value of property, albeit reduced to monetary terms by the sale of the property, which has accrued through a series of years, albeit subsequent to March 1, 1913. The very essence of the common understanding of income is that it is of current or very recent origin; and when it is of recent origin it does not have to be reduced to terms of money to become income. A sale is no miraculous process whereby to convert capital into income, as people who have to sell their furniture to keep the larder stocked are well aware.

Furthermore, it is difficult to see just how, in a case of conversion of capital, the idea so insisted upon by Justice Pitney in Eisner v. Macomber as "fundamental" to the conception of income underlying the Sixteenth Amendment, has any operation at all. This was, it will be recalled, that "income" must be "dissevered" from its "source." But how, or in what sense, is the gain derived from a sale of property "dissevered" from the rest of the price—unless perhaps that part of the price was paid in marked dollars?[13] It ought to be noted, too, in passing, that precedents dealing with the respective rights of life-tenants and remaindermen in gains derived from invested capital,[14] though they were relied upon in part by Justice Pitney in his opinion, are now dismissed by Justice Clarke as of little value in determining questions arising under the Sixteenth Amendment.

[13] For, as was just said, sale does not convert "capital" into "income." The same question also arises, from another angle, if the income is the reward of labor. Can the Sixteenth Amendment be really considered as requiring that "income" be "dissevered" from the labor that produced it; and if so, in what sense?

[14] See the *Review*, Vol. 14, p. 640, note.

Nevertheless, in Walsh v. Brewster,[15] decided at the same sitting with the Smietanka case, the decision in the latter and that in the Macomber case are lined up side by side without the breath of a hint that they may be in any way incompatible. But the Brewster case has also an independent interest, since it challenges the sacrosanctity, in certain situations, of the previouly inviolate date of March 1, 1913, as that from which all taxable gains are to be reckoned. The facts of the case were as follows: Certain bonds were purchased in 1909 for $191,000 and sold in 1916 for the same amount, after having stood on March 1, 1913, at $151,845. The question arose whether the vendor, who was the original investor, was taxable under the Sixteenth Amendment on the difference, namely $39,155, that being the gain which had accrued to him since March, 1913. The court held, however, with the acquiescence of the government, that an income must be a true gain on the part of the investor, and that no such gain was realized by the sale in question. The query suggests itself, whether the obverse of this rule would apply. Thus suppose the bonds in question had been bought and sold at the lower figure, but had stood on the intervening March 1, 1913, at the higher figure; should the vendor be allowed to reckon the difference as a deductible loss for the year 1916? Certainly, by the logic of Walsh v. Brewster, he should not.

2. Excess Profits and Estate Taxes

It was the purpose of the excess profits tax clause of the Revenue Act of October 3, 1917, to lay a special tax upon the incomes of trades and businesses exceeding what was deemed a normally reasonable return upon the capital actually invested. But how was the capital "actually invested" to be ascertained? In general, the test imposed by the act was the actual cost of the property, a test which, in view of the general advance in values during the war worked considerable hardship to investments antedating the period of inflation. Nevertheless, in La Belle Iron Works v. United States,[16] the act was upheld in this respect against the charge that it violated both the "due process of law" clause of the Fifth Amendment and the "uniformity" clause of Article I, section 8.[17] The latter, the court pointed out, requires only territorial

[15] 255 U. S. 489; see also Goodrich v. Edwards, *ibid.*, p. 527.

[16] 256 U. S. —, decided May 16.

[17] "All duties, imposts, and excises shall be uniform throughout the United States."

uniformity.[18] The other objection it answered as follows: "The difficulty of adjusting any system of taxation so as to render it precisely equal in its bearings is proverbial, and such nicety is not even required of the states under the 'equal protection' clause [of the Fourteenth Amendment], much less of Congress under the more general requirements of due process in taxation."

In New York Trust Company v. Eisner,[19] the estate tax levied by the act of September 8, 1918, was assailed as unconstitutional. Plaintiffs in error admitted that the case of Knowlton v. Moore[20] established the right of the national government to levy a tax on legacies, and that such a tax was an excise. But, they said, whereas a legacy tax is on the right of the legatee to take, the estate tax is on a transfer of property while it is still being effectuated by the state and so both an intrusion by the national government upon state processes, and a tax on the "unalienable" right of ownership and so a "direct" tax. Notwithstanding the support it received from Justice White's opinion in the Knowlton case, the argument was brushed aside by Justice Holmes with the pertinent remark that in this matter of taxation "a page of history is worth a volume of logic." In short, the estate tax is constitutional; and furthermore, state inheritance and succession taxes are not deductible from the value of the gross assets when determining the net assets upon which it may be reckoned. On the other hand, by another case,[21] the amount of the federal estate tax is deductible from the gross income of a testator's estate for the purpose of the income tax imposed by the Act of February 24, 1919.

IV. FREEDOM OF PRESS AND THE POSTMASTER GENERAL

The question of constitutional freedom of speech and press was again before the court in two cases, that of Gilbert v. Minnesota, which is mentioned later in connection with questions of state power, and that of United States, ex rel. Milwaukee Social Democratic Publishing Company

[18] The court, therefore, assumes that the excess profits tax is an impost or excise, that is, an indirect tax; and this probably involves a similar assumption as to income taxes, since the excess profits tax is, in form certainly, an income tax. Apparently, therefore, the court still adheres to Brushaber v. Union P. R. Co., 240 U. S. 1, notwithstanding some implications to the contrary in Justice Pitney's opinion in Eisner v. Macomber.

[19] 256 U. S. —, decided May 16.

[20] 178 U. S. 41.

[21] United States v. Woodward, 256 U. S. —, decided June 6.

v. A. L. Burleson, Postmaster General,[22] which dealt with the power of the postmaster general under the acts of Congress and the Constitution in revoking second-class mail privileges. The case turned in the first instance on the construction to be given to the act of March 3, 1879, which provides "that the conditions upon which a publication shall be admitted to the second class are as follows: First, it must regularly be issued at set intervals, as frequently as four times a year," etc. In a letter to Senator Bankhead, dated August 22, 1917, Postmaster General Burleson declared that, "for many years this Department has held publications not to be 'regularly issued' in contemplation of the law when any issue contained non-mailable matter," and it is apparently on this theory that a month later the department revoked the second-class privilege of the *Milwaukee Leader* for carrying matter alleged to be "non-mailable" under title 12 of the Espionage Act. In other words, by treating the term "non-mailable" as used in the act passed in 1917, as an equivalent of the phrase "not regularly issued" in the sense of the act of 1879, the postmaster general conferred upon himself, tentatively, the power to revoke the *Leader's* second-class privilege—a privilege indispensable to profitable publication—for an indefinite future, whereas if he had acted under the Espionage Act alone, his only power would have been to exclude from the mails altogether such issues of the *Leader* as from time to time he might have found to be "non-mailable" because containing matter forbidden by the act.

Did Congress ever intend that these two statutes should be thus brought into juxtaposition? Though the court apparently so held, since it sustained the postmaster general's order,[23] it is difficult not to agree with Justice Brandeis, in his dissenting opinion, that "the fact that material appearing in the newspaper is non-mailable under wholly different provisions of the law can have no effect upon whether or not the publication is a newspaper"—which is all that the act of 1879 had in contemplation. When, however, Justice Brandeis goes on to argue that the construction of the law impliedly ratified by the court raises grave constitutional questions, he is on less secure ground. It may be, at least it is not denied by the court, both that the right of circulation is an essential element of the right of publication, and so of freedom of the

[22] 255 U. S. 407.

[23] The court does speak of "its [Congress'] practically plenary power over the mails," but the cases which it cites in this connection by no means establish an arbitrary authority in this field: Ex parte Jackson, 96 U. S. 727; Public Clearing House v. Coyne, 194 U. S. 497; Lewis Publishing Co. v. Morgan, 229 U. S. 288.

press, and that the second-class privilege is for newspapers an essential part of the right of circulation. But it is equally true that where the right of publication does not exist, then neither does the right of circulation; and the right of circulation does not exist, on the clearest principles, for matter designed "to create hostility and to encourage violation of the law," which is just the kind of matter the *Leader* is alleged to have contained.

The constitutional issue thus boils down to the question whether relator was deprived of its rights "without due process of law," and this raises the question whether the postmaster general's order was punitive in nature, as Justice Brandeis says, or only a fair measure of administration. On this point Justice Clarke remarks with force, that it was "not possible for the United States to maintain a reader in every newspaper office of the country to approve in advance each issue before it should be allowed to enter the mails," and that "when, for more than five months, a paper had contained, almost daily, articles which under the express terms of the statute, render it 'non-mailable' it was reasonable to conclude that it would continue its disloyal publications." Besides, as Justice Clarke points out, it was always "open to relator to mend its ways . . . . and then to apply anew for the second-class privilege."

For the rest, the postmaster general's action was attended by due notice to relator, which was given the right to a hearing, and was followed by a review of the facts by a court for the purpose of determining their sufficiency to support the order based upon them. That, however, the decision enlarges greatly the postmaster general's power in respect to "non-mailable" matter is obvious, and this is a change in the law which the court might well have left to Congress, and probably would have, had it not feared to expose Mr. Burleson, about to quit office, to vexatious prosecutions.

V. POLICE POWER IN THE DISTRICT OF COLUMBIA

During the emergency of the war, Congress enacted a statute, to run for two years, which gave existing tenants in the District of Columbia the right to continue in occupancy of their dwelling places at their own option, provided only that they paid rent and performed other conditions as already fixed by lease, or as required by the commission created by the act. In Block v. Hirsh[24] the validity of this statute, which was

[24] 256 U. S. —, decided April 18.

enacted by virtue of the power of Congress over the District of Columbia, was assailed as contravening the "due process of law" clause of the Fifth Amendment, while in Brown Holding Company v. Feldman,[25] which was decided the same day, a similar enactment by the New York legislature for the city of New York was challenged under the "due process of law" clause of the Fourteenth Amendment.

Speaking of the congressional act, Justice Holmes, for the majority of the court, said: "The general proposition to be maintained is that circumstances have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law . . . . . The space in Washington is nearly monopolized in comparatively few hands and letting portions of it is as much a business as another. Housing is a necessary of life. All the elements of public interest justifying some degree of public control are present. The only matter that seems to us open to debate is whether the statute goes too far. For just as there comes a point at which the police power ceases and leaves only that of eminent domain, it may be conceded that regulations of the present sort, pressed to a certain height, might amount to a taking without due process of law. . . . . The regulation is put and justified as a temporary measure.[26] . . . . . A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change. Machinery is provided to secure the landlord a reasonable rent," and to deprive him "of the power of profiting by the sudden influx of people to Washington, caused by the needs of government and the war, and thus of a right usually incident to fortunately situated property. . . . . But while it is unjust to pursue such profits with sweeping denunciations the policy of restricting them has been embodied in taxation and has been accepted. It goes little further than the restriction put upon the rights of the owner of money by the more debatable usury laws. The preference given to the tenant is almost a necessary incident of the policy and is traditional in English law. If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail."

Four dissentients, including the late Chief Justice, spoke through Justice McKenna, who took for his text that "maxim of experience" "withstand beginnings."[27] The fact is interesting, since Justice

[25] 256 U. S.—, decided April 18.

[26] Citing Wilson v. New, 243 U. S. 332; and Ft. Smith and W. R. Co. v. Mills, 253 U. S. 206.

[27] Citing Boyd v. United States, 116 U. S. 616.

McKenna himself spoke for the court in the German Alliance Insurance Case,[28] which furnished the majority with its leading precedent on this occasion. But, Justice McKenna rejoins, "the difference is palpable between regulation of life insurance rates, and "the exemption of a lessee from the covenants of his lease in defiance of the rights of the lessor;" and of the earlier cases generally he contends that they only "justify the prohibition of the use of property to the injury of others," while the statute under review aims to "transfer the uses of the property of one and vest them in another." Nor is the statute to be vindicated as a temporary measure to meet emergency. "No doctrine," says he, quoting from Ex parte Milligan,[29] "involving more pernicious consequences was ever invented by the wit of man than that any of its [the Constitution's] provisions can be suspended during any of the great exigencies of government;" and he later adds on his own account that, if a power exists in government at all, "it is perennial and universal, and can give such duration as it pleases to its exercise, whether for two years or for more than two years."

It is impossible not to sympathize a good deal with Justice McKenna in his dismay, though he has hardly defined the problem. Certainly the principle that most private rights must ultimately yield to urgent public interest is not advantageously to be assailed; but we can insist that the full constitutional machinery for ascertaining whether such measure of public interest exists be kept efficiently functioning. Indeed, we can do more, and protest against the too careless embodiment in our constitutional jurisprudence of the assumption that because government has the power to meet emergencies, anything which it may do to that end is necessarily constitutional.[30] Whether Justice Holmes' opinion in the present case really affords the court any foothold against less well justified legislative declarations of emergency, time alone can disclose.

VI. NATIONAL PROTECTION OF CIVIL RIGHTS

Perhaps the most interesting case of the term from the point of view of constitutional theory was that of United States v. Wheeler,[31] which grew out of the Bisbee deportations of 1919. Wheeler and others,

[28] German Alliance Ins. Co. v. Lewis, 233 U. S. 389.

[29] 4 Wall. 2.

[30] This seems to be an assumption underlying the decision in Wilson v. New, 243 U. S. 332.

[31] 254 U. S. 281.

who were active in this affair, were indicted under section 19 of the United States Criminal Code for conspiracy to injure and oppress certain citizens of the United States residing in Arizona in the exercise of rights and privileges secured them by the Constitution and laws of the United States, especially the right and privilege to reside peaceably therein and to be immune from unlawful deportation from that state to another. The Government relied in part upon Article IV, section 2 of the Constitution,[32] whereby, it is claimed, "the right of a citizen of one of the states to free ingress and regress to and from another state . . . . is secured in some sense," but more especially upon Crandall v. Nevada,[33] in which the court had set aside many years ago a state law on the ground that it interfered with the right of a citizen of the United States to pass freely from a state for the purpose of exercising the rights and duties accruing to him from the Constitution and laws of the United States and the existence of the national government. A salient passage of the government's argument reads as follows:

"The existence of the states prevents a citizen of the United States from deriving, as such, a right under the Constitution to territorial mobility within the limits of any particular state. To that extent he is dependent upon the laws and agencies of the several States. The right, however, to move freely, *suo intuitu*, from one State into another is an entirely different matter and brings into the problem the concept of the Union. It is a right necessarily inherent in federal citizenship and secured, therefore, by the Constitution. Unless this be true, no Union was in fact established in 1789, because no less than this can be properly attributed to citizenship of the United States."

And furthermore, it continued:

"The injury done by the defendants in this case has a double aspect, one toward the individuals deported and the other toward the State into which they were deported. By their deportation the individuals became, or might become, a charge upon the State of New Mexico, a disturbance of its peace, or an offense to its own state policy. According to the decisions of this court, and especially Kansas v. Colorado and Missouri v. Illinois,[34] the offended state was secured by the Constitution

[32] "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

[33] 6 Wall. 35.

[34] 185 U. S. 125, and 206 U. S. 46. See also Georgia v. Tenn. Copper Co., 206 U. S. 230.

a right to sue the offending State in the federal courts, and to have applied there, not the law of the offending State, but a general or international law. Is not this a strong reason for believing that the Constitution also secured a right to the individuals, not as citizens of Arizona but as citizens of the United States, to have their cases determined in a federal court by federal law?"

Finally, alluding to Justice Miller's famous phrase in the Neagle Case, it was argued that the deportees came within the protection of "the peace of the United States."[35]

The court, speaking through the Chief Justice, sustained the lower court in quashing the indictment of Wheeler and his associates. Following the distinction developed in the Slaughter House Cases[36] between the rights of state citizenship and those of national citizenship, it classified the right invoked in this case as belonging to the former category, and pointed out that it was protected by Article IV, section 2, only against discriminatory action by the states themselves, not against individual action; nor, it was asserted, did Crandall v. Nevada, rightly interpreted, militate against this view in any way.[37] The Neagle case and the trespass suffered by the state into which the deportation took place were passed over in silence.

Although the decision unquestionably follows conventional lines,[38] it leaves one not entirely satisfied. Perhaps the time will come when, with the spread of the Ku Klux Klan or some equally egregious form

[35] 135 U. S. 1, 69.

[36] 16 Wall. 36.

[37] The words of the Chief Justice are: "Crandall v. Nevada . . . . . so much relied upon in the argument, is inapplicable, not only because it involved the validity of state action, but because the state statute considered in that case was held to directly burden the performance by the United States of its governmental functions and also to limit rights of the citizens growing out of such functions; and hence it also follows that the observation made in Twining v. New Jersey, 211 U. S. 78, 97, to the effect that it had been held in the Crandall Case that the privilege of passing from state to state is an attribute of national citizenship, may here be put out of view as inapposite." He then appropriately adds: "With the object of confining our decision to the case before us, we say that nothing we have stated must be considered as implying a want of power in the United States to restrain acts which, although involving ingress or egress into or from a state, have for their direct and necessary effect an interference with the performance of duties which it is incumbent upon the United States to discharge."

[38] In addition to the cases cited above, see Paul v. Virginia, 8 Wall. 168; Ward v. Maryland, 12 Wall. 418; United States v. Cruikshank, 92 U. S. 542; United States v. Harris, 106 U. S. 629; and the Civil Rights Cases, 109 U. S. 3.

of *imperium in imperio*, it will become necessary to discard the outworn artificiality of the decisions in the Slaughter House and Civil Rights Cases. Certainly it is rather dismaying to be told in one breath that national citizenship is "paramount and dominant" and in the next that all our most fundamental rights come from the states and are dependent on them for protection.

VII. THE CONSTITUTION—AMENDING POWER

The cases decided last term still left one objection to the validity of the Eighteenth Amendment unanswered, that which was based on the fact that in proposing the amendment Congress had stipulated that ratification to be operative must take place within seven years. In Dillon v. Gloss[39] this objection is disposed of in the interesting and convincing opinion of Justice Van Devanter. "That the Constitution contains no express provision on the subject," runs the opinion, "is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. . . . .

"We do not find anything in the Article which suggests that an amendment, once proposed, is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections of relatively the same period, which, of course, ratification scattered through a long series of years would not do."

Furthermore, there is the general character of the Constitution as a whole:" . . . . As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article 5 is no

[39] 256 U. S. —, decided May 16.

exception to the rule." "Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt."[40]

VIII. FEDERAL JUDICIAL POWERS AND THE SUABILITY OF STATES

Ex parte, in the matter of the state of New York[41] involved the question of the right of a district court of the United States to entertain, by virtue of its admiralty and maritime jurisdiction, an action *in rem* against certain tugs which had been chartered by the superintendent of public works of the state of New York, and which had been libelled for damages done their tows. The court held that since, under the Eleventh Amendment, an action *in personam* would not lie against the superintendent of public works, his liability in the premises being clearly official and not personal,[42] the action *in rem* would not lie either. In a second case of the same title it was further determined that a vessel, the property of a state and employed in public governmental service, is exempt from seizure by admiralty process *in rem*.[43] The two cases

[40] For the present writer's review of Hawke v. Smith, 253 U. S. 221, and Rhode Island v. Palmer, *ibid.*, 350, in which important questions as to the validity and construction of the Eighteenth Amendment were dealt with, see the *Review* for November, 1920 (Vol. 14, pp. 648–54). It should be added that the report of the latter case, as it appears in the bound volume, contains a dissenting opinion by Justice Clarke which was not available when the review cited was prepared. Justice Clarke accepts the first seven and the tenth paragraph of the announced "Conclusions" of the court, but demurs to the eighth, ninth, and eleventh, that, taken together, they, "in effect, declare the Volstead Act . . . . to be supreme law of the land,—paramount to any state law with which it may conflict." His own view of the word "concurrent" of the amendment is that it means "joint and equal authority," the view also taken by Justice McKenna, it will be recalled, in his dissenting opinion. Furthermore, Justice Clarke holds that Congress derives no authority from the second section of the amendment to treat as intoxicating liquor which is "expressly admitted" by the court "not to be intoxicating." In this respect its power has not the scope either of the war powers of the national government or of the police powers of the states.

[41] 256 U. S. —, decided June 1.

[42] Citing Beers v. Arkansas, 20 How. 527; Hans v. Louisiana, 134 U. S. 1; Fitts v. McGhee, 172 U. S. 516; Palmer v. Ohio, 248 U. S. 32; Dubine v. New Jersey, 251 U. S. 311.

[43] *Ibid.* The immunity extended by the Eleventh Amendment "even in the case of municipal corporations" to "property and revenue necessary for the exercise" of the powers of government is regarded by Justice Pitney as analogous, citing Klein v. New Orleans, 99 U. S. 149.

He also suggests that the immunity from jurisdiction of public vessels, which is recognized by international law, might furnish a principle applicable to the

therefore illustrate the proposition, which falls in the line of familiar doctrine, that the admiralty and maritime jurisdiction of the federal courts is limited by the Eleventh Amendment.

The orignal jurisdiction of the Supreme Court, however, over controversies between states is not so limited. In New York v. New Jersey,[44] accordingly, the court sustained the right of the former state to maintain an original suit against the latter, to enjoin it from discharging sewage into the waters of upper New York Bay, but finally refused the injunction asked for, on the ground that the threatened invasion of New York's rights had not been established by clear and convincing evidence. The suit was, therefore, dismissed, but without prejudice to a renewal of the application "in conditions which the state of New York may be advised require the interposition of the Court."[45]

(*To be concluded.*)

case at bar; but he refrains from deciding the point. See The Exchange v. McFadden, 7 Cranch 116, and The Parlement Belge, L. R. 5 Probate Div. 197.

[44] 256 U. S. —, decided May 2.

[45] See the cases cited in note 34, *supra*. On the question of what is a case "arising under this Constitution," etc. (Article I, section 2, clause 1), see note 6, *supra;* also American Bank and Trust Co. 2. Federal Reserve Bank of Atlanta, 256 U. S. ——, decided May 16.

AMERICAN GOVERNMENT AND POLITICS

THE FIRST (SPECIAL) SESSION OF THE SIXTY-SEVENTH CONGRESS APRIL 11, 1921—NOVEMBER 23, 1921*

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The New Administration. Beginning on March 4, 1921, the Republican party, for the first time in ten years, was in complete control of the executive and both branches of Congress. Entirely apart from the issues of party politics, its régime promised to be interesting. Campaign pledges had been made that legislation would be speedily passed relieving the country of the ill effects of what President Harding called "war's involvements;" economy and efficiency were to be secured; more business in government and less government in business were among the promises, and the reorganization of the administration, long talked of, was to be achieved. There were, moreover, two significant possibilities from the standpoint of party government. During the campaign, Mr. Harding said that "government is a simple thing," and that, if he was elected President, Congress would be allowed to play its proper part under the Constitution. He pledged the Republicans to inaugurate "party government, as distinguished from personal government, individual, dictatorial, autocratic, or whatnot." This was a pledge not to follow Mr. Wilson's example and coerce, or even lead, Congress; and the interesting question was, whether Congress would not be helpless without executive direction; whether legislative inefficiency is not the price that must be paid for the absence of some executive autocracy. In the second place, remembering the circumstances of President Harding's nomination and the different Republican elements which came together during the campaign, one was justified in wondering whether the party would continue to present a solid front in its congressional work; whether there would not be a split between progressives and reactionaries resembling that of 1910–1912. The congressional session gave answers to both of these questions: there were unmistakable signs that President Harding regretted his self-denying

* For previous notes on the work of Congress, see *American Political Science Review*, Vol. 13, p. 251, Vol. 14, pp. 74, 659, Vol. 15, p. 366.

ordinance and realized that he should—on occasion he even tried to—lead Congress, and there developed a powerful revolt by members representing the agricultural sections of the country against the more conservative leadership of the party.

The House of Representatives elected Representative Gillett of Massachusetts as Speaker by a majority of 176 votes (Representative Kitchen receiving 122 votes) and adopted without change the rules of the Sixty-sixth Congress. It is worthy of note that the Republican majority in the House is so great that the two-thirds vote necessary to suspend the rules can be secured from the party following, and thus this safeguard of the rights of the minority is temporarily in abeyance.[1] In their committee assignments the Republicans adhered to the caucus rule of not putting the same member on more than one of the so-called "exclusive committees," the ten most important ones, but the rule was relaxed in two instances for the minority.[2] In the Senate the only noteworthy feature of the organization was the filibuster by the Democrats against the change that the Republicans proposed in the rules as to committees. With 14 new Republican members there were not enough vacancies to give each of them a place on an important committee, so it was sought to increase the membership of these committees from 15 to 16. There would thus be 10 Republicans on each committee, and the disparity between the majority and minority would be increased. Senator Brandegee gave notice of his proposed amendment to the rule on April 12, but the Republican majority was not able to force action until April 18. Another, and not unimportant reason for the proposed change, was that the Republican leaders wished to be sure of controlling their committees and not to suffer defeats by reason of the absence of regular Republicans and the combination of a progressive or so with the Democrats. The rule is still adhered to that a Senator cannot be a member of more than two of the "exclusive committees."[3]

[1] See Representative Pou's remarks, *Congressional Record*, April 11, p. 10.

[2] For a similar agreement in the Senate, see *American Political Science Review*, Vol. 14, p. 75. The House procedure was discussed on April 18, and the debate contains some interesting information about the control of the majority over minority committee assignments.

[3] See *American Political Science Review*, Vol. 14, p. 75. In the debate on the Republican proposal, Senator Williams quoted a Latin verse, now a very rare occurrence in the Senate, and Senator Brandegee, with great frankness, described the majority's intentions in a parody of Kipling's "Recessional" (*Congressional Record*, April 18, p. 340):

> "The tumult and the shouting dies,
> The captain and the kings depart,
> And the steam roller is about to start."

The Legislative Record. As is always the case, private and local legislation occupied a major portion of the time of Congress. The session covered more than 150 working days, with a recess from August 24 to September 11,[4] after which, for several weeks, the House was without a quorum and made no attempt to transact any important business. It was far ahead of the Senate and could afford to mark time. The House was actually in session 139 days. One hundred and fifty bills and resolutions were passed, and 130 went through the House but were not considered by the Senate; so Representative Mondell, the Republican floor leader, could say that the House had made a record of an average of two bills or resolutions a day.[5] During the session, 9775 bills and resolutions were introduced into the House, but only 415 were considered by committees and reported. The Senate was confronted by 3103 bills and resolutions. Senate committees made 320 reports.

Tariff and Taxes. Congress was called together primarily to consider the tariff and the revision of the tax laws. The Emergency Tariff Act was passed, with some of its provisions changed from the form in which it was vetoed by President Wilson. The Tax Revision Law went through the House in four days and was considered by the Senate for six weeks, and as passed it satisfied no one. Senator Penrose, its chief author, called it "a temporary or transitional measure." A permanent tariff bill was passed in the House but failed of consideration in the Senate. Midway in the session, the administration determined that the tariff was such a difficult question and economic conditions in Europe and the United States were so unsettled, that it might be better to wait. Postmaster general Hays put the idea out in a speech and when the response from the country was favorable, action was postponed. There was much doubt particularly about the so-called "American valuation plan;" but even if the administration had been firm in insisting on its program, the measure could not have been considered

[4] The Senate leaders (both of the majority and minority) proposed a recess from July 7 to July 28, but their concurrent resolution was beaten (27–24) by the agricultural "bloc," which desired legislation for the relief of the farmers (amendments to the Federal Farm Loan Banks, the grain futures bill, etc.). See *Congressional Record*, July 5, p. 3501.

[5] "Private members, like governments, have all got legislation on the brain and think that the primary business of Parliament is to legislate, whereas in fact it is to look after the administration of existing laws so well that no new laws or very few are necessary." "A Student of Politics" (said to be Herbert Sidebotham) in the London *Times*, April 17, 1920; quoted, with some excellent remarks, by C. Delisle Burns, in *Government and Industry*, p. 61 (London, 1921).

by the Senate, for, as has been said, 130 bills and resolutions sent over by the House failed of passage. Even such an important matter as the Newberry case had to be postponed until the regular session.[6]

Appropriations. Even though this was a special session of Congress, several appropriation bills were necessary. The navy bill was not passed by the Senate at the short session, and the army bill failed under a pocket veto, President Wilson not believing that provision was made for a sufficient military force. The naval appropriation bill was passed with the Borah disarmament amendment attached and the appropriations somewhat scaled down by the insistence of the House, and the army bill limited the army to 150,000 men.[7] A deficiency bill for 1921 was necessary (H. R. 6300); appropriations were made for expenses incident to the first session of the Sixty-seventh Congress (H. R. 3707); the shipping board was given $48,000,000; and $4,000,000 more was allotted for carrying to completion the Alaskan railroad. Under the rules of the House, passed in anticipation of the Budget Act, which also became law, a single committee was responsible for appropriations.[8] The House also passed a deficiency bill for 1922 that was not considered by the Senate.

[6] The Senate committee on privileges and elections reported to the Senate (September 29) on the Ford-Newberry contest, and the resolution to dismiss Ford's petition was debated at intervals until the adjournment.

[7] An interesting question was raised when President Harding, in signing the bill, wrote to Congress that the normal expiration of enlistments would probably approximate one-half the reduction that Congress had ordered. But, he added, "I would not feel justified in asking the Secretary of War to enforce the dismissal of men who have enlisted for a definite term of service. There seems to be a moral obligation involved, the violation of which would be demoralizing to the spirit of the army itself." The letter continued: "If a probable deficit develops in a just procedure to reduce our enlisted forces, I will report to the Congress at the earliest possible day." The act expressly provided that no deficit should be created. In this connection it is interesting to recall the statement made by President Wilson when he signed the Sundry Civil Appropriation Act of 1913, which provided that the funds appropriated for the enforcement of the anti-trust laws should not be used for the prosecution of agricultural associations or trade unions. In a memorandum made at the time of signature, Mr. Wilson said: "I can assure the country that this item will neither limit nor in any way embarrass the actions of the Department of Justice. Other appropriations supply the Department with abundant funds to enforce the law." The President said that if he had had the power to veto items in appropriation bills, this exemption would have gone out. See George Harvey, "Six Months of Wilson," *North American Review*, November, 1913 and *American Year Book 1913*, p. 24.

[8] See *American Political Science Review*, Vol. 14, p. 670.

Other legislation. Congress provided for amendments to the Volstead Act (with particular reference to beer); grants-in-aid to the states for road construction to the extent of $90,000,000; and for the protection of maternity and infancy to the extent of $1,500,000 for the current year, with the possibility of increases; the restriction of immigration; further assistance for the farm loan board; and amendments to the Edge Export Act. Laws were also passed forbidding gambling in grain futures and regulating the packers. The latter statute divests the federal trade commission of some of its authority and gives it to the secretary of agriculture. In the form in which it passed, it was not objected to very seriously by the packers; indeed, the charge was made in the Senate debate that the bill had been written by the packers, and its value as legislation will not be determined until there is opportunity to see its effects. The other laws are either of private, local, or very minor importance, and are not worth listing.

The House passed several important bills that were not considered by the Senate. The tariff bill has already been mentioned. In addition, the House passed a bill providing for the funding of government obligations to the railroads (there was a special message from President Harding urging immediate action on this but it was not taken up in the Senate), and a bill providing for a foreign debt refunding commission.

The Bonus. While no provision was made for a bonus, or "adjusted compensation" as the proponents of the legislation call it, ex-soldiers were cared for by the so-called Sweet Law. It consolidates into one veterans' bureau, the bureau of war risk insurance, the rehabilitation division of the federal board for vocational education, and the part of the public health service concerned with ex-soldiers. Regional offices throughout the country are provided for.

Several attempts were made to get congressional action on the larger question of "adjusted compensation."[9] The Senate committee reported a measure (June 20), and its consideration seemed likely until President Harding appeared before the Senate (July 12) and requested it to delay action. The bill was immediately abandoned.[10] Later, in the

[9] The House of Representatives passed a bill on May 29, 1920, although it was not intended that it should become law in that form. It was certain that the Senate would not consider it and it seemed wise to take some action before the presidential campaign. See *American Political Science Review*, Vol. 15, p. 79. The Senate committee also reported a bill in February, 1921, but it was not considered.

[10] On August 20, Representative Cockran sought to secure consideration by the House of a resolution appointing a committee of nine members "to consider

House of Representatives, Representative Fish sought to amend the Fordney foreign loan bill by providing that interest payments on the loans be used for a cash bonus for ex-service men. The amendment went out on a point of order, but the Republican leaders promised that in the next session of the Congress legislation would be put through. In the Senate, amendments were offered to the Tax Revision Law retaining the excess profits taxes for bonus purposes, but they were defeated.[11]

The President and Congress. President Harding's intention, announced in his campaign, was to be a "constitutional executive," and he apparently had no desire to interpret this according to Mr. Dooley's definition of "a constitootional ixicutive" as being "a ruler that does as he dam pleases an' blames th' people." The President was to announce a party program and give Congress his advice, but in no case was he to try to impose his will on that of the legislature. This attitude was doubtless in part responsible for the failure of Congress to function more efficiently, although, in view of the marked discontent with legislative bodies everywhere, it may be suggested that, comparatively, the record of Congress was not so bad. During the session the Washington correspondents sent up several kites to enable the President to ascertain whether public opinion would approve a more vigorous attitude; but apparently the popular mandate did not seem sufficiently definite to warrant him in increasing by one the campaign pledges that had been forgotten. On occasion, however, the President did let Congress know his opinions, but such occasional half-hearted intervention was not very successful.

There were no differences between the executive and legislature that resulted in vetoes, but that, probably, was due to the failure of Congress

what measures should be taken to vindicate the rights and privileges which have been violated and invaded by this action of the President of addressing a communication respecting legislation to the Senate, and not to the Congress, as required by the Constitution." The resolution was laid on the table. *Congressional Record*, p. 5788. In September, 1918, President Wilson appeared before the Senate and urged the passage of the then pending Woman's Suffrage Amendment, describing it "as a vitally necessary war measure," and "as vital to the right solution of the great problems which we must settle immediately when the war is over." The House had approved the amendment in January, 1918. See *American Political Science Review*, Vol. 14, p. 80. Mr. Wilson also delivered an address on the essentials of permanent peace to the Senate (January 22, 1917) "as the council associated with me in the final determination of our international obligations." See Scott, *President Wilson's Foreign Policy*, p. 245.

[11] *Ibid.*, October 29, p. 7798.

to do more and the desire of the President to avoid an open break, rather than to any meeting of minds. The President, for example, was beaten decisively on the question of surtaxes. He sent a letter to Representative Fordney asking a compromise of 40 per cent, but the House, even with a Republican majority of two-thirds, ignored his wishes. The House committee refused to accept Secretary Mellen's tax proposals, even though they had President Harding's approval; and Secretary Mellen's foreign debt refunding bill was materially modified before it passed the House on October 24. Even with a commission, instead of the uncontrolled authority of the secretary of the treasury which the administration proposed, the House accepted the measure with unfeigned reluctance. The President's attitude on the bonus was courageous, but here Congress was only too ready to shift responsibility to the executive and postpone the evil day of decisive action.

In one respect, President Harding took a very interesting attitude, which, if exercised frequently and on important matters, might be more "unconstitutional" than leadership of the Roosevelt or Wilson kind. I refer to the fact that, in some cases, he seemed to play the House of Representatives, which he could control, against the Senate which he could not. Thus, the emergency peace resolution was held up in the House in accordance with the President's wishes and was finally passed in the form that he desired.[12] On disarmament, he was not so successful in having his way. The Borah resolution, authorizing and requesting the President to invite Great Britain and Japan to a naval conference, was added to the naval appropriation bill by a unanimous vote in the Senate. The phraseology seemed to the President to be too definite, to give the Congress the initiative, if a conference was held.[13] No

[12] The resolution was dated July 2, 1921, but the formal proclamation of peace was not made until after the ratification of the peace treaties. It was issued on November 14, but was dated back to July 2.

[13] Before the session began, it was predicted in some quarters not far removed from the capitol, that the real control of foreign policy would be vested in the Senate, which, incidentally, was not enthusiastic over the appointment of Mr. Hughes as secretary of state. There was slight, if any, fulfillment of this prediction. The Senate ratified the treaty with Colombia, at the request of the administration and with remarkable promptness. (It was held over from the special session of the Senate, March 4–14, to approve appointments, and was taken up in the special session of Congress.) Mr. Wilson's much decried idealism was translated into interests, and Senators who voted against righting a wrong were in favor of ratifying to secure oil and harbor privileges. Some other unimportant treaties were ratified: the treaties with Germany and Austria went

attempt was made to have the Borah resolution defeated in the Senate, but when the measure was sent to conference, the House leaders refused to allow the House to express an opinion on this Senate amendment,[14] and the House foreign affairs committee reported a joint resolution, expressing "full concurrence in the declaration of the President 'that we are ready to coöperate with other nations to approximate disarmament'." It was not the intention that the resolution should be passed, but it was simply in the nature of an instruction to the conferees as to a possible modification of the Borah amendment. The sentiment in the House in favor of the Borah provision, however, was so strong that when the conference report was made, the House was given a straight-out vote. Mr. Mondell read a letter from President Harding saying that "it is not of particular concern to the administration what form the expression of Congress shall take," and so the Borah resolution was adopted with only four dissenting votes.

On the question of free tolls for American vessels passing through the Panama Canal, it was reported that President Harding was anxious to have action postponed until after the disarmament conference. But before the recess, the Senate had reached a unanimous consent agreement to vote on the Borah bill on October 10, and the bill was passed. The administration had little difficulty, however, in seeing that the bill was not brought up in the House.

The Agricultural "Bloc." One of the most interesting developments of the session was the power and activity of the so-called agricultural "bloc." This is simply a group of senators and representatives who decided to act together in matters affecting the farmer, to force concessions from the Republican leaders as the price of their support of the party, and to act as a unit in putting on the statute books measures of importance to the agricultural interests which the party leaders desired to delay or hesitated to sponsor. In the Senate 22 members, mostly from western states, can be listed as the minimum of the agricultural "bloc," but its proportions have on occasion grown to 55—28 Republicans and 27 Democrats. In the House there are about 100

through as proposed by the administration, and while President Harding was very tactful in appointing Senators Lodge and Underwood to his disarmament commission, the initiative here has been Secretary Hughes' and not the Senate's. One interesting incident of the relation of the President and Congress with regard to foreign affairs, was the failure of Mr. Harding to reverse President Wilson's action in refusing to carry out the provisions of the Jones Shipping Law. See *American Political Science Review*, Vol. 14, p. 670.

[14] See *Congressional Record*, June 3, P. 2090 and June 7, pp. 2234 ff.

members. Their most spectacular action was to agree with the Senate surtax amendment over President Harding's objecting letter.

The influence of the "bloc" in the Senate was shown by the Emergency Tariff Act, the law regulating the packers, the provisions of a billion dollars credit for farm exports, the regulation of grain exchanges dealing in futures, the Curtis bill appropriating $25,000,000 as a revolving fund for farm loan banks, and the Kenyon bill, providing an increased rate of interest for farm loan bank bonds, without an increase of interest rates to the farmers. On the tax revision bill, the agricultural "bloc" gave the Senate leaders notice that certain changes would have to be made, and they were made. The surtax of 50 per cent on incomes, the repeal of the transportation taxes, and the increase of estate taxes, are schedules on which they forced concessions. Much was said, of course, of "class legislation," of the breakdown of party government, and no doubt was left as to the attitude of the administration. It may be suggested, however, that for the Republican leaders to declaim against the agricultural "bloc" is a case of the pot calling the kettle black, with the exception that the pot has been camouflaged, while the kettle glories in its inky expansiveness. Only the future can determine whether the activities of the group will be a flash in the pan or whether they will have a profound effect on party organization and congressional leadership.

Notes on Procedure. The session showed once more how the lack of restrictions on debate in the Senate delays legislation and how the extreme control which the House leaders exert can be used to prevent deliberation and force immediate action. The House passed 130 bills and resolutions that were not considered in the Senate, so much time did this body devote to the tariff and taxation, although it should be said that the Senate was concerned with the treaty with Colombia and the treaties of peace. As usual there was some discussion of the necessity for cloture, but the existing rule was not invoked; unanimous-consent agreements for a vote at a particular time sufficed in every case, and as usual there was only discussion with no action. Senator Harrison proposed changes in the rules providing that in the future there should be open executive sessions of the Senate to consider presidential nominations and treaties, but his resolution was defeated by reference to the committee on rules.[15]

[15] See *Congressional Record*, May 9, p. 1114, and May 14, p. 1429. On July 7, following the resignation of Mr. Wolcott, the senior senator from Delaware, Senator Walsh raised the question of whether a quorum of the Senate consisted

As usual, also, both the Senate and the House of Representatives lost a great deal of time in securing quorums and in having the roll called. In the Senate a quorum was called for 348 times, an average of more than twice a day, and there were 187 record votes. In the House members did not make the point of order as frequently as has been the case in past sessions, and the roll was called only 48 times.[16] There were 133 yea and nay votes. Nevertheless, the Senate and the House each spent about 16 days of the session in having the roll called.

In the debate in the House on the tax revision bill, Representative Cockran said that the House had fallen to the level of the electoral college. That was a slight overstatement, for the electoral colleges vote in silence, and members of the House make speeches, or, under leave to print, publish in the *Record* imaginary contributions to the debates. It is true, nevertheless, that on some of the biggest issues that come before Congress, the House, like the electoral colleges, is deprived of all discretion. It is limited by its leaders to a "yes" or "no" vote on the proposals that they make.

The House, for example, voted to terminate the state of war, but was not allowed to amend the emergency peace resolution, and the resolution as reported, was different from the one that, at the previous session, the House had been forced to accept without amendment.[17] The House passed the Emergency Tariff Act in the form in which it was vetoed by President Wilson. This, Representative Fordney said, was the "instruction" of the Senate finance committee. "If we send the bill back just as it was vetoed by President Wilson, they will pass it, but we must make no change in it. If we add anything or take anything out, they will not give it consideration." The House (according to the *Record*) showed a curious sense of humor and greeted this statement with "laughter." Further reflection, however, changed the senatorial mind. The bill was passed by the House the day after it was reported, but it did not go through the Senate until a month later and then was considerably amended.

While the Senate was not so openly exacting on the tax revision law, so far as the influence of the House was concerned, the result was

of 48 or 49. The discussion seemed to indicate that although the practice of the Senate adopted the former number, a strict interpretation of the constitutional provision would require the latter number. See *Congr. Record*, p. 3633.

[16] It was pointed out that during the Sixty-sixth Congress the House of Representatives lost time equivalent to ten working days in having the roll called on points of no quorum that were made by a single representative.

[17] See *American Political Science Review*, Vol. 15, p. 81.

substantially the same. The Senate added 833 amendments and yielded to the House on only 7 of them. The procedure in the House was just as effective a gag as the Senate's insistence that the emergency tariff bill must be passed unchanged. On its face, the rule for the consideration of the tax bill was an extremely liberal one. Two days of general debate were allowed, and then the bill was to be considered for amendment under the five minute rule; but, "committee amendments to any part of the bill shall be in order at any time and shall take precedence of other amendments." When the two days allowed for amendment elapsed, there was no time left for the individual member to propose changes. The hour fixed for a vote arrived and the House had but a single opportunity to express an opinion on a schedule. This was afforded by the Democratic's leader's motion to recommit to the ways and means committee. In the Senate there were nearly a hundred roll calls; in the House, which under the Constitution has the greater responsibility, there was a single roll call on what should go into the bill.[18]

In the discussion of the bill for reapportionment of representatives, which was returned by the House to the committee, a good deal was said about the decline of the House of Representatives in the opinion of the country and its subordinate position in comparison with the Senate. At the previous congressional session, the House had passed a reapportionment bill which would have kept the number of representatives as at present—435. The bill was not considered in the Senate,[19] and in the debate on the second bill it was said that the reason for the failure of the Senate to act was that the Senate desired to see the

[18] There was a roll call later on the question of whether the Senate 50 per cent surtax amendment should be agreed to.

Attention should also be called to the fact that the House passed two important bills under suspension of rules. The rural posts roads bill, providing for assistance to the states in road construction was passed under suspension of rules with the House not allowed to propose amendments, and the same day (June 27) the leaders put through the anti-beer bill. This was intended to overturn the attorney-general's ruling and was an emergency measure, introduced by the chairman of the rules committee himself, because he thought that the Volstead supplemental act had too many details and covered too many subjects to throw it open in the House at that time for debate, amendment and vote. On this occasion, however, by unanimous consent, debate continued for four hours instead of the customary forty minutes. It was said in defense of such a procedure that, thus limited as to its action, the House would deliberate "in a much more dignified manner."

[19] See *American Political Science Review*, Vol. 15, p. 370.

numbers of the House increased; that if the proposal then pending, to increase the number to 460 were adopted, there would be no objection from the Senate. The upper chamber, it was said, believes that its own strength will be increased by a more numerous House of Representatives, for the more unwieldy the House becomes, the more willing its leaders will be to resort to an extreme form of guillotine and force formal votes of approval of their proposals. The House would continue to be vociferous, but would be weak, for the Senate could deal much more effectively with the masters of a shackled chamber than with the agents of a deliberative assembly. This interpretation of the Senate's attitude on reapportionment may not have been authoritative, but it at least had the earmarks of reasonableness, and, considered in connection with present day procedure in the House, sheds some light on the operation of the bicameral theory in the congressional system.[20]

[20] Attention should be called, however, to the fact that the change in the House rules requiring matters added to bills in the Senate which would have been subject to points of order if originally proposed in the House, to be brought in by the House conferees for separate votes, again resulted in the House being able to have its way as against the Senate. This was particularly true with regard to the naval appropriation bill. The House forced substantial reductions. In the discussion of the conference report on the naval bill in the Senate, there are some very plaintive references to the effects of this House rule. Reference should also be made to the Senate debate on November 23 on the conference report on the tax revision bill. This contains a very valuable discussion of the powers of conference committees.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

State Tax Legislation in 1921. During the last year the most interesting developments in the field of state taxation, with few exceptions, have been constitutional. This is true for the negative as well as the positive accomplishments. In 1920, the voters of twelve states, all of which states are of the west or south, with the exception of Maine and New Hampshire, voted upon 26 constitutional amendments relating to subjects dealing with taxation or finance. Of the 26 amendments, 18 were adopted and 8 defeated. During the year 1922 ten constitutional amendments relating to taxation will be voted upon in eight states.

Constitutional Amendments on Taxation. Twelve states in 1920 voted upon proposed changes in the revenue sections of their constitutions. These states and the amendments are as follows:

California voted upon four constitutional changes, two of the amendments having been proposed by legislative action and two by initiative measures. Two of the amendments were adopted and two were defeated. The more important of the two which were accepted relates to the alien poll tax. It was adopted by the overwhelming vote of 667,924–147,212. The amendment provides for an alien poll tax of not less than $4 on every alien male inhabitant of the state over twenty-one years of age and under sixty years except certain defectives. The tax received is to be paid into the county school fund in the county where collected. The legislature, in harmony with this constitutional provision, has enacted a law providing that such alien male inhabitants shall pay an annual poll tax of $10. A penalty of 50 per cent is provided for the nonpayment of the poll tax and provision made, in case the tax and penalty are not paid, for the seizure of personal property owned by the delinquent and sale of such property after three hours verbal notice of time and place; also all debts owing to such delinquent, including wages, are made subject to garnishment and seizure. The collection of this poll tax is placed in the hands of the assessor, who is authorized to employ extra field deputies, one for each thousand aliens residing within the county.

The second amendment adopted adds a new section to the constitution exempting orphanages from taxation. This amendment was carried by a vote of 394,014–371,658.

Colorado adopted an amendment which was proposed by an initiative petition, increasing the limit of the state levy from 4 to 5 mills, the extra mill to be devoted to the erection of additional buildings to be used by the state educational institutions.

The voters of Mississippi in 1920 adopted an amendment relating to laying a poll tax on women.

Missouri adopted the following constitutional changes: (1) Authorizing cities of 75,000 inhabitants or more to acquire and pay for waterworks, gas and electric light plants, street railway, telegraph and telephone systems. (2) Authorizing cities of 30,000 inhabitants or more to incur additional indebtedness for the purchase or construction of waterworks, ice plants and lighting plants. (3) Requiring county courts to levy an additional road tax of 50 cents on the $100 valuation of any road district if a majority vote so declares. (4) Providing for the levy of an annual tax of not less than ½ of 1 cent nor more than 3 cents on each $100 valuation of taxable property for the raising of a fund for the education of the deserving blind. (5) Providing for a bond issue of $1,000,000 for a soldiers' settlement fund and the levy of a tax of one cent on each $100 valuation of taxable property. The object of this amendment is to provide employment and rural homes for honorably discharged soldiers, sailors and marines of the state who have served in any of the wars of the United States. (6) Authorizing the issue of road bonds in the sum of $60,000,000 and the laying of a direct annual tax to care for the interest and principal. Provision is also made for the appropriation of a certain part of the motor vehicle fees and taxes to be applied in payment of the principal of the bonds. (7) A further amendment to be voted upon at a special election in August authorizes the interest on these road bonds to be paid from motor vehicle fees and licenses.

Nebraska's new constitution, adopted September, 1920, provides that "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes may be authorized by law." This provision is a great improvement upon the old revenue section adopted in 1875. In the section dealing with exemptions, the only new provision is the exemption from taxation of "household goods to the value of $200 to each family."

North Carolina adopted four amendments, the most important of which relates to the income tax. The old provision stated "that no income shall be taxed when the property from which the income is derived is taxed." This provision limited the income tax from salaries, wages and fees. The new amendment removes this provision and definitely provides for a tax on income derived from all sources, not to exceed 6 per cent, and with exemptions of not less than $2,000 for a married man or a widow or widower having minor children and to all other persons $1,000.

Another amendment provides that the poll tax for state purposes shall not exceed $2 and for cities and towns $1. A further amendment reduces the rate of tax for state and county purposes from 66⅔ cents to a limit of 15 cents on each $100 valuation of taxable property. The fourth amendment abolishes payment of the required poll tax as a qualification for voting.

Virginia adopted two amendments, one of which prohibits school districts from exceeding the levy fixed by law for the raising of additional sums for school purposes. The other permits the state to contract debts for the purpose of constructing or reconstructing public roads.

Of the two measures defeated in California, both were initiated by petition and both were important. One related to the levy and collection of ad valorem tax for state university purposes of 0.2 mills per dollar on taxable property. Though the amendment was of the greatest importance to the future financial welfare of the university it was defeated by a vote of 380,027–384,667. The other initiative measure related to the single tax principle. It proposed that beginning January 1, 1921, there be exempted from taxation personal property, planted trees, vines and crops; improvements appertaining to land being taxed at not exceeding preceding year's amount until exempted January 1, 1923, and other county, municipal and district revenues collected from land values; beginning January 1, 1924, requires that all public revenues be raised by taxing land values exclusive of improvements; declares war veteran, church and college exemptions and privately owned utilities using highways, unaffected thereby. This measure went down to defeat. The vote was 196,694–563,503.

In Maine provision for an income tax was defeated at the September election in 1920 by a vote of 53,975–64,787.

In Minnesota an amendment which proposed to tax incomes and exempt certain real and personal property was defeated. It is evident

that the incorporation of the income tax provision with the one relating to the exemption of certain personal property from taxation defeated the amendment, as the exemption provision was reasonable in itself.

Montana voters defeated a constitutional amendment which proposed to substitute a tax commission of three members for the state board of equilization, and to "classify property for the purpose of taxation and provide the per centum of value of each class as the basis for taxation where a classification has not been made."

In New Hampshire for the second time the voters rejected the income tax amendment to authorize the legislature to impose a tax "upon incomes from whatever source derived, which taxes may be graduated and progressive, with reasonable exemptions." The amendment providing a graduated inheritance tax was also defeated for the second time. Both of these amendments were rejected in 1920.

The single tax amendment which the Oregon Single Tax League had proposed by initiative petition was decisively defeated. This amendment proposed as follows: "To assess all taxes necessary for the maintenance of state, county, municipal and district government upon the value of the land itself irrespective of the improvements in or on it, and to exempt all other property and rights and privileges from taxation from July 1, 1921 to July 1, 1925; and thereafter to take the full rental value of the land, irrespective of improvements as taxes, and no other taxes of any kind to be levied."

Three vital amendments to the Indiana constitution submitted at a special election September 6, 1921, were defeated. One proposed to give the governor the power to approve or disapprove any item in any appropriation bill. A second further amendment stated that "the general assembly shall provide by law for a system of taxation." If adopted, all restrictions on the power of the legislature over taxation would have been removed. It would appear that the adoption of this second amendment would permit the imposition of an income tax; but, in spite of this fact, a further amendment was proposed relating to the "levy and collection of taxes on incomes from whatever source derived."

Constitutional Amendments to be Voted Upon in 1922. In California the 1921 legislature passed three amendments to be voted upon in 1922. One relates to the imposition of a tax in lieu of all other taxes and at a different rate upon all notes, debentures, shares of capital stock, bonds or mortgages not exempt from taxation; the second amendment includes those released from active duty under honorable condi-

tions in the class of veterans whose property to the value of $1,000 is exempt from taxation; a third amendment proposes a material increase in the rate of tax on public utilities and certain corporations.

In Michigan an income tax amendment passed a special legislative session to be voted upon in 1922. It provides "for a tax of not to exceed four per cent upon net gains, profits and incomes from whatever source derived, which tax may be graduated and progressive," and classification of property, persons, firms and corporations is permitted. The state tax commission opposed the limitation of the tax to "four per cent" and the insertion of the word "net" before "gains, profits and incomes."

In Minnesota an amendment will be voted upon in 1922 providing for an annual occupation tax, in addition to all other taxes, on all ores mined by any person or corporation; 50 per cent of the tax to go to the state, 40 per cent to the permanent school fund and 10 per cent to the permanent university fund.

Missouri will vote upon a veteran bonus amendment in 1922 which calls for a bond issue and a direct annual tax to care for the principal and interest.

In Montana the 1921 legislature proposed an amendment to be voted upon in 1922 providing for a state board of equalization, with the powers and duties of a tax commission. An amendment in 1920, to this same section of the constitution, sought to create a state tax commission and to provide for the classification of property for tax purposes, but was defeated by the voters.

In Oklahoma an amendment to be voted upon in 1922 proposes to increase the rate of levy for all purposes in the state from 31½ mills to 41½ mills. The sole beneficiary is the local school district which receives the added 10 mills.

Two amendments passed the Pennsylvania legislature in 1921, but must again pass the session of 1923 before submission to the people. One of these would remove the specific names of certain military orders and insert organizations of honorably discharged soldiers, sailors and marines whose property may be exempt from taxation. The other amendment provides for the classification of property for the purpose of laying graded and progressive taxes.

In Tennessee an amendment which passed in 1921 and will be voted in 1922, provides for a uniform tax on persons and property of the same class and for exemptions by general law. A further amendment passed proposing an income tax upon incomes "from whatever source derived." This measure must pass another session before submission to the voters.

In Utah an important amendment passed in 1921 will be voted upon in 1922. This measure will empower the legislature to classify for purposes of taxation all property except mines or mining claims and to impose graduated and progressive taxes upon incomes.

State Tax Commissions. Twelve states, either through new measures or by amendments to previous law, passed legislation relating to the state administration of the tax system. California enacted a new law requiring the state board of equalization to report to each legislature and to the governor the relative percentage of tax borne by corporations and industries paying taxes to the state, as compared to the percentage or rate of ad valorem tax borne by property locally taxed.

Idaho, while she has a state board of equalization, created a bureau of budget and taxation in the office of the governor. The duties of this bureau are: a visit to each county at least once a year for the purpose of securing assessment data; to aid the state board of equalization; to submit an estimate of the values of all public service corporations to the state board; to investigate the tax laws of other states and to recommend changes to the governor. In addition to the foregoing the bureau is expected to investigate the work and efficiency of state departments and prepare plans for the coördination of departmental work.

Illinois provides that the tax commission shall consist of five members. Indiana made minor changes in the supervision, by the state board of equalization, of local assessments and the issuance of bonds. Nebraska, in a new law, authorizes the appointment of a single tax commissioner, term two years, salary $5,000. He has jurisdiction over all revenue laws, subject, however, to review by the state board of equalization and assessment of which he is a member.

New Mexico made a general revision of its revenue code but made no change in the form of the tax commission created in 1919, that is, a chief tax commissioner who devotes all his time to the work and two associate commissioners on part time. The outstanding feature of the new law is that the tax commission is given original jurisdiction to assess and fix the values of all public utilities, banks, mines, oil and gas properties. It is to exercise general supervision over the administration of the assessment and tax laws, over boards of equalization and all officers having power of levy and assessment and it is to confer with, assist, advise and direct such officers. The state tax commission is further charged with the approval of county budget estimates.

New York is notable for the constructive character of its 1921 tax legislation. The outstanding feature was the consolidation of all state

tax agencies in a single tax commission composed of a president and two associate members. Formerly there were three taxing departments, the state tax commission, the state comptroller and the secretary of state. The reorganized commission will administer the following taxes: personal income tax; inheritance tax; stock transfer tax; license tax on motor vehicles and cycles; corporation taxes of every nature including the income tax on business corporations. The commission will continue to assess special franchises and supervise the mortgage recording tax.

North Carolina also has taken advanced ground in the reorganization of its revenue system. The most important step appears to be the creation of a state department of revenue with a single commissioner whose sole duty is the supervision of the revenue code. Formerly the corporation commission supervised the revenue code in addition to the regulation and supervision of railroads, public utilities and banks. There is also created a state board of equalization composed of the new commissioner of revenue, the chairman of the corporation commission and the attorney-general. This board shall hear and determine appeals.

Tennessee created two tax administrative agencies: a tax department with a single tax commissioner, and a state board of equalization of six members, one of whom is the tax commissioner. The term, both for the board and the commissioner, is six years. The commissioner has general supervision over the administration of the tax laws; fixes rules governing local tax officials; procures the assessment of all property at its actual cash value and administers corporation tax law. The state board of equalization is given full power to investigate assessments. An evident weakness yet remains in the present revenue system of the state, namely, the method of assessing public utilities. These are still subject to assessment by the railroad commission and to equalization by a separate board consisting of the governor, secretary of state and state treasurer.

In Washington, under the new administrative code consolidating the various state departments, the tax commissioner becomes supervisor of the division of taxation in the department of taxation and examination. The tax commissioner of West Virginia is made eligible for reappointment and authorized to employ experts and appoint appraisers to aid in valuation of taxable property. In Wyoming, the chairman of the state board of equalization is authorized to call in December each year, a meeting of the county assessors and one member of the board of county commissioners to meet with the state board to discuss matters relating to the tax laws.

Special Tax Investigation Commissions. Seven states authorize special commissions to make a study of taxation. California repealed the act of 1915 appropriating $75,000 for an investigation and report upon taxation. Iowa has a joint legislative committee of eight, four senators and four representatives, to study and report upon a revision of the tax laws. The committee is authorized to prepare such bills "as will provide adequate and fair means and methods of assessment and equalization, and place and distribute the burdens of direct taxation fairly and equitably." It is also permitted to employ expert assistants.

Georgia provides for the appointment of a joint legislative committee to consider the question of changing the system of taxation from an ad valorem property tax. Report is to be made to the 1922 legislative session.

New Jersey continues its special tax commission created in 1919. The special work of the commission is to prepare bills on the following, to be presented to the legislature in 1922: (1) The elimination from taxation of all personal property, including machinery, raw materials, stock on hand, investments and accounts. (2) A state income tax at a sliding scale not to exceed 6 per cent on all incomes in excess of $1,000, using the same exemptions as the national government to be collected by the state and distributed to the various communities in proportion to their final assessed valuations of realty. (3) A referendum to the voters of New Jersey at the general election in 1922, as to the adoption or rejection of all such proposed legislation.

New York also continues its special commission to investigate the taxation of public service corporations and the special franchise tax.

Oregon provided for a committee of seven, appointed by the governor, to examine into the possibilities of new sources of revenue or new methods of taxation and formulate plans or suggestions to the governor for the use of the legislature in 1923.

Utah authorized the creation of a special commission of five citizens, to be appointed by the governor, one to be a member of the state board of equalization. This commission is to decide upon the policy or necessity of an income tax or of a classified property tax, or of such other system of taxation of property, real and personal, tangible and intangible, as in the judgment of the commission may arrive at a more equitable distribution of the burden of taxation and afford adequate revenues to the state, and is to report on or before January 1, 1923.

Washington has appropriated $20,000 to be used to secure data on taxation for the use of the next session of the legislature. The state is

moved to make this investigation by reason of the fact that real and tangible personal property are now bearing the entire burden of taxation. The governor is authorized to employ expert assistants.

Local Tax Administration. Massachusetts authorizes assessors of towns to appoint and remove citizens as assistant assessors. In cities, the mayor or assessors may appoint such assistant assessors. Michigan provides that the county board of supervisors in equalizing the assessments shall do so by estimating the true cash value of the real estate and personal property subject to assessment.

New Jersey provides for the removal of an assessor for neglect of duty. Removal is to be made by the state supreme court upon complaint of the state board of taxes and assessments. The assessor removed is not eligible to hold the office again for five years. New Mexico gives the county assessor an increased allowance for assistants and expenses.

New York authorizes cities of the second and third class to provide for a department of assessment and taxation. Such cities may by ordinance abolish the office of assessor if such office is not a part of the city charter. Pennsylvania authorizes boroughs, townships, school districts and poor districts to appeal from any assessment to the board of revision and to the courts. This law places such districts on the same level with regard to appeals from assessments as the individual assessed. A further law provides that in counties of the first class (which relates to Philadelphia), assessors may hereafter be appointed without regard to political party affiliations and provision for representation by minority political parties is eliminated. West Virginia removes the qualification "being a freeholder in the county in order to hold the office of assessor" and simply requires the condition of residence.

Exemption from Taxation. Sixteen states materially amended the statutory provisions relating to tax exempt property. Ten states made more liberal the provisions exempting the property of veterans or veterans' organizations.

Iowa increases the value of exempt property of veterans of the Mexican and Civil Wars from $300 to $3000; of the war with Spain, Chinese relief or Philippine War, from $300 to $1800; and property of veterans or nurses in the World War is exempt to the value of $500. Maine includes "marines" as beneficiaries of the property exempt clause and adds that property conveyed to any veteran for purpose of obtaining exemption from taxation shall not be so exempt. Massachusetts increases the exempt value of the real and personal estate of veterans' organizations from $50,000 to $100,000.

New Hampshire changes the value of the exempt taxable property of veterans of the Civil War, Spanish-American War and Philippine War, from $3000 to $5000; disabled veterans of the foregoing wars and of the World War may be exempt from paying a poll tax by the selectmen; the personal property and real estate owned and occupied by the G. A. R., United Spanish War Veterans or the American Legion is also exempt. New Jersey and North Carolina exempt buildings, real estate and personal property of all veterans' organizations. New York includes amongst the beneficiaries of the exemption law "dependent mothers" of any person receiving the pension, bonus or insurance.

Oregon, by a new law, exempts property of soldiers or sailors of the Mexican War, Indian War, or Civil War or their unmarried widows to the value of $1000. Vermont exempts the real estate and buildings owned by any post of the American Legion and increases the value of exemption of a veteran of the Civil War or his widow from $500 to $1000 when the entire estate does not exceed $1500. Wyoming exempts property to the value of $2000, of veterans of the Civil, Spanish-American and World Wars, their widows during widowhood and nurses who served in the World War. This state also exempts such veterans from poll tax except school polls.

A number of states seek to encourage agriculture, education, industry and transportation by lessening the burden of taxation. California exempts from taxation "date palms under eight years old, fruit and nut bearing trees under four years old and grape vines under three years old." Idaho by a very interesting but abstruse amendment seeks to exempt from taxation the property of electrical power and transmission companies used for furnishing power for pumping water on irrigated lands. Exemption is to benefit the consumer or user of the water, except in the case where such water is sold or rented, in which event the property of the company is to be taxed to the extent that the water is sold or rented. The state board of equalization is to determine the amount of exemption due the company and reduce its taxes to that extent. The amount of the exemption shall equal the amount of taxes included in the rates of the company or utility. The amount of taxes which would have been due had not the exemption been granted is to be credited upon the bill for power rendered to the consumer, in the proportion which the consumer's use of power bears to the whole amount of power furnished.

Indiana increases the exemption of real estate for manual and trade schools from 320 to 800 acres, and also exempts certain municipal and

other local government bonds issued for certain improvements of public benefit; also bonds and notes of the state board of agriculture; real estate and personal property used by the Indiana National Guard or other military organizations for armory purposes, and real and personal property of organizations not for profit, which are organized to discover and prevent fires and save property. Massachusetts provides that no commutation or excise tax is to be assessed against any street railway or electric railroad company during 1922 and 1923. New Hampshire extends to include the year 1923 an act passed in 1919, which exempts any street railway from taxation if during the year it has been unable to meet its operating expenses and fixed charges. Rhode Island relieves the United Electric Railways Company and the Newport Electric Corporation from the payment of all taxes including the various municipal franchise taxes, except the state tax upon gross earnings of one per cent.

Nebraska makes a specific exemption of household goods of the value of $200 to each family. New York at the special session in September 1920 authorized counties and municipalities to exempt from county or local taxes for ten years new dwelling houses commenced before April 1, 1922, and completed within two years. In order to validate an ordinance of New York City passed in February, 1921, which exempted from taxation for ten years new dwellings, with a maximum exemption of $100 for each room and not to exceed $5000 for a single family house or apartment of a multi-family house, the legislature passed an act permitting local authorities to limit the exemption of new dwellings.

North Dakota takes the unusual stand of reducing the tax exemption. On residences on city lots the value of the tax exemption is reduced from $1000 to $500, and on the tools, implements or other equipment of a farmer from $1000 to $500. Oregon, by a new law, exempts all state or county bonds issued for construction or maintenance of public roads or bridges, the exemption not to apply to income received from any investment in such bonds. Rhode Island exempts the real and personal property of fraternal organizations the net income from which is used to build an asylum, home or school for the education and relief of indigent members, their wives, widows or orphans. Wisconsin, by an amendment, exempts personal ornaments and jewelry habitually worn, not to exceed in value $750; the real property exemption of religious organizations used as a home for the feeble minded is increased from 120 acres to 160 acres; a new law exempts not to exceed 40 acres nor less than 20 acres to any bona fide settler for agricultural purposes for three years if such real estate, when acquired, is uncleared and unimproved.

Income Tax. Six states amended their income tax laws. Massachusetts limits the additional deductions allowed in the case of business incomes to the proportion of business expenses which the taxable interest and dividends bear to the total interest and dividends. The amendment requires fiduciaries, for the purpose of the income tax, to make annual return of gains from the sale of intangible personal property. A new law provides for an extra tax upon the net income of certain corporations of $\frac{3}{4}$ of 1 per cent. "Net income" is defined as that income furnished the federal government and due prior to April 1, 1921. No credit is allowed for any federal, war or excess profits tax or other income taxes.

Missouri, at the special legislative session in August, reduced the rate of tax on incomes from $1\frac{1}{2}$ to 1 per cent.

New York passed several amendments to the personal income tax law, but the most important relates to a method of computing gain or loss from the sale of property. This amendment provides as follows:

(1) In ascertaining the gain or loss from the sale or exchange of any class of property "the basis shall be, in case of property acquired on or after January 1st, 1919, the cost or the inventory value if inventory is made in accordance with the income tax article."

(2) In case of property acquired prior to January 1, 1919, and disposed of thereafter, (a) No profit shall be deemed to have been derived if either the cost or the fair market price or value on January 1, exceeds the value realized. (b) No loss shall be deemed to have been sustained if either the cost or the fair market price or value on January 1, 1919, is less than the value realized. (c) Where both the cost and the fair market price or value on January 1, 1919, are less than the value realized, the basis for computing profit shall be the cost or the fair market price or value on January 1, 1919, whichever is higher. (d) Where both the cost and the fair market price or value on January 1, 1919, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on January 1, 1919, whichever is lower."

North Carolina, in harmony with the constitutional amendment, enacts a statutory income tax on both personal and corporate incomes. The rate of tax is, for corporate income, 3 per cent; for personal incomes a graduated tax of from 1 to 3 per cent, the maximum being 3 per cent on the excess over $10,000. To single persons, an exemption of $1000 is granted, to a married man with a wife living with him $2000, and in the case of a widow or widower with minor children, $2000. The law

also exempts the income of a citizen from an established business outside the state and taxes income of a nonresident received from an established business within the state. The law is administered by the state tax commission and the proceeds are for the use of the state.

North Dakota exempts from the income tax law, "interest upon the obligations of the state of North Dakota and its political subdivisions." Wisconsin provides that in deductions from the income of persons no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, unless income from such property or business is subject to income tax. A new law exempts coöperative associations and other similar organizations from filing a state income tax return unless subject to an income tax. By a further amendment 10 per cent, formerly 15 per cent, is allowed as a deduction on account of gifts to religious, charitable, humane or scientific corporations.

Inheritance Tax. Seventeen states made amendments to their inheritance tax law. California, in a complete revision of the 1917 inheritance tax law, provides a schedule of deductions to be used in determining the market value of the property transferred. The rates upon transfers to relationships of the first and second degrees were materially amended. On amounts in excess of $500,000 the maximum rate is 12 per cent for first degree relationship, and for second degree, 18 per cent. In the case of third degree relationship the maximum rate is 20 per cent upon amounts in excess of $200,000, and for fourth degree, 20 per cent upon amounts in excess of $100,000. The former maximum rates varied according to degrees of relationship. For first degree, 15 per cent upon amounts in excess of $1,000,000; second degree 25 per cent in excess of $1,000,000; third degree, 30 per cent in excess of $1,000,000; fourth degree, 30 per cent in excess of $500,000.

Colorado makes a complete revision of the inheritance tax law. Residence, for purposes of the tax, is to be established if the decedent shall have dwelt or lodged in the state for the greater part of twelve consecutive months in the twenty-four months next preceding his death. Rates are materially increased for each degree of relationship. The office of inheritance tax commissioner is created and the appointment made by the attorney-general. The appointee is to be an attorney who has practised law in the state for not less than five years immediately preceding his appointment.

Georgia amends the inheritance tax act by authorizing the inheritance tax commissioner to appoint agents to examine estates for

inheritance tax purposes, the commissioner to review all appraisements and assessments made by such agents.

Illinois increases the rates on all degrees of relationship 100 per cent, so that the maximum, for first degree relationship, is 14 per cent; for second degree, 16 per cent and in all other cases 30 per cent.

Iowa makes a general revision of the inheritance tax law. The former rate of 5 per cent changed to graduated rates, the minimum being 1 per cent and the maximum 7 per cent for first degree relatives; and a minimum of 5 per cent and a maximum of 7 per cent for any other "person, firm, corporation or society."

Missouri, at the special legislative session in August, increased the widows' exemptions from $15,000, the former amount, to $20,000; and the rate on estates amounting to $50,000, or more was slightly lowered.

Montana enacts an entirely new inheritance tax law which, it is stated, is almost identical with the Wisconsin law. New Hampshire, by a new law, provides for a transfer tax of 2 per cent upon all personal property within the state owned by a nonresident upon death of owner. New Mexico, in its general revision of the revenue system, included the former inheritance tax law but no important changes are made, the rates and exemptions remaining as in the former law.

New York in consolidating the tax agencies of the state transfers the administration of the inheritance tax to the state tax commission. An amendment provides that a "transfer made within two years prior to death without adequate consideration will be deemed to have been made in contemplation of death." Transfers by a "bargainor" as well as a "grantor" or "donor" are made taxable, and the state tax commission is authorized to fix the number and salaries of appraisers. North Carolina amends the law to include in the class of second degree relatives "uncle or aunt by blood." North Dakota provides that the county from which the inheritance tax is paid shall receive from the state treasurer 50 per cent of the amount, formerly 25 per cent. A further amendment exempts from the tax all intangibles of nonresident decedents.

Pennsylvania increases the rate from 5 per cent to 10 per cent upon all property passing to persons other than direct heirs. Rhode Island enacts a law which authorizes the tax commissioners to employ some person to administer the inheritance tax law. In Washington, under the new administrative code, the inheritance tax department is transferred to the office of the attorney-general. A new law exempts, from

the inheritance tax, bequests for charitable and educational purposes within the state.

Wisconsin increases the tax value of the estate exempt to the widow from $10,000 to $25,000. The rates for relatives of the first degree are increased to 2 per cent, formerly one per cent; second degree 4 per cent, formerly 2 per cent; third degree 6 per cent, formerly 3 per cent; any other degree 8 per cent, formerly 5 per cent. Wyoming creates the office of inheritance tax commissioner and makes the state insurance commissioner the commissioner ex-officio.

Public Utilities. California raises the rate of state tax on certain public utilities. The tax is a percentage upon the gross receipts earned within the state. Railroads, however, are separated from street railways and taxed at the rate of 7 per cent, street railways at 5¼ per cent. It is provided, however, that in case the courts determine that the legislature is without the power to thus differentiate between railroads and street railways in the rate of tax, that the tax on street railways shall be 7 per cent also. Various car companies, express, telephone, telegraph, gas or electric light companies are increased over former rates. The rates on all franchises, other than on those of certain public utilities are also raised.

Minnesota requires, by a new law, that the personal property of electric light and power companies having a fixed situs shall be listed and assessed where situated without regard to the company's principal place of business. The rate of tax upon the gross earnings of telephone companies is increased from 3 to 4 per cent.

New Jersey amends the law taxing railroads so that the state board of taxes and assessment shall complete its valuation of railroad property by November 1. The old law provided that the assessment as well as the valuation on second class railroad property should be completed by November 1. It was necessary therefore for the board to use the tax rates of the year in which the assessment was completed, though the tax was not to be used until the following year. Under the new amendment, the railroads will have an opportunity to review the valuation before the assessment is completed, and the tax rates applicable to the valuation made will be the rates for the current year in which the taxes are to be used.

New Mexico provides that the valuation of such public utilities as railroads, telegraph, telephone and transmission companies shall be based upon the valuation made by the interstate commerce commission, plus the value of subsequent betterments. The allocation of the value

of rolling stock to the state is to be made upon the basis of days in the state.

Wyoming, by a new law, requires the state board of equalization to assess all public utilities, other than express, railroad, telephone and telegraph companies. The state board shall also assess all pipe line companies.

Miscellaneous Corporations. California increases the rate of tax payable to the state on shares of capital stock of banks from 1.16 to 1.45 per cent; and on the gross premiums of insurance companies from 2 per cent to 2.6 per cent.

Connecticut requires a retail mercantile business and a wholesale mercantile or manufacturing business to pay to the state a tax of $1 on the $1000 or fraction of gross income from such business and 25 cents on a like amount from a wholesale business conducted within the state. In each case a minimum tax of $5 shall be paid. If a financial loss is sustained, without making any deduction for salaries, no tax, other than the tax of five dollars, computed on gross income, is to be paid.

Michigan enacts a new law which provides for fees and taxes on corporations. For filing, examining and certifying articles and amendments, and for annual or special reports certain fees are charged varying from 50 cents to $10. Franchise and organization fee for both domestic and foreign corporations is one mill upon the dollar of authorized capital stock, in any case a minimum fee of $25. For filing annual report, an annual fee of 3½ mills upon each dollar of paid up capital stock and surplus, no fee to be less than $50. Building and loan associations when filing annual report to pay fee of one mill upon each dollar of paid up capital and legal reserve. No such fee to exceed $2000. Mining corporations to pay an annual fee of 3½ mills upon each dollar of the fair average value of its issued capital stock. Such fee not to be less than $50 nor more than $10,000. The tax on foreign corporations to be based on the relation of the property in the state to the total property of the corporation elsewhere.

Missouri, at the special legislative session in August, reduced the annual franchise tax on corporations from the former rate of $\frac{1}{10}$ of 1 per cent to $\frac{1}{20}$ of 1 per cent.

Nebraska places a tax of 4 mills on the dollar of the gross earnings of building and loan associations. This tax to be in lieu of all other taxes on the intangible property of such associations. Grain brokers, manufacturers of sugar, motion picture film distributors and oil dealers, are to pay the same rate of tax on their average total investment as on the

tangible property. This tax to be in lieu of all other taxes. New York provides for an organization tax of 5 cents a share on corporations issuing shares of no par value. If the corporation is foreign the license fee is 6 cents a share. If such corporations are subject to business franchise tax, the shares will be assessed at actual value, but not less than $5, instead of $100 as formerly.

Rhode Island adds a provision to the corporation franchise tax law that non-par-value stock shall, for the purpose of the tax, be deemed to have a par value of $100 a share.

West Virginia, by an unusual law, imposes a general sales tax of $\frac{1}{6}$ of 1 per cent as a privilege tax upon the gross proceeds from the sale of manufactured products and from the sale of any other tangible property, the gross income of banks, trust companies and public utilities, and from "any gainful business or profession." This sales tax supersedes the former privilege taxes imposed upon all corporations and based upon net income. All sales up to $10,000 are exempt.

License Taxes on Specified Commodities and Tickets. The evident need for more revenue to meet the increased cost of government causes seven states to tax gasoline, petroleum, cement, gypsum, coal and mineral ores. Connecticut leads the way with a tax of 1 cent a gallon upon gasoline used in motor vehicles and motor boats. Gasoline to be used commercially or for manufacturing purpose is exempt from tax; so also is the gasoline used to propel "road rollers, street sprinklers, fire engines, fire department apparatus, police patrol wagons, ambulances owned by municipalities or hospitals, agricultural tractors and vehicles which run on rails," exempt from tax. Distributors are required to make monthly report to the motor vehicle commissioner of the number of gallons sold and to pay the tax. Connecticut also enacts a new and elaborate law which imposes state taxes on tickets of admission to places of amusement.[1]

[1] These taxes are as follows: (1) Tax of $\frac{1}{2}$ of 1 cent for each 10 cents or fraction thereof paid for admission to any place after September 1, 1921; same rate to be paid by any person admitted free or at reduced rates, except employees, municipal officers on official business and persons in the military or naval uniform and children under 12. (2) Upon tickets to theatres when sold at news stands, hotels and places other than the theatre ticket office at not to exceed 25 cents in excess of the price at the theatre ticket office, a tax of $2\frac{1}{2}$ per cent on such excess and if sold for more than 25 cents in excess of the price at the theatre ticket office, a tax equal to 25 per cent of the total excess. (3) A tax of 25 per cent on tickets sold by the management of the theatre in excess of the regular charge. All such taxes being additional to those paid by the purchaser. (4) Persons having permanent use of boxes or seats in any theatre shall

Georgia makes provision for a gasoline tax of 1 cent a gallon and requires quarterly payments of such tax to the comptroller general. Gasoline imported and sold in original packages is exempted.

Minnesota provides that persons engaged in the business of mining iron or other ores shall, in addition to all other taxes, pay an annual occupation tax equal to 6 per cent of the value of all ores mined. Methods outlined for obtaining the valuation of such ores and annual reports to be made to state tax commission. The tax is for state purposes.

Montana requires an annual license tax of $1 and a further license tax on the mining of metals equal to 1½ per cent of the net proceeds; on the mining of coal equal to 5 cents a ton for all coal mined; retail coal dealers to pay a license tax of $1 and an additional tax of 5 cents a ton for coal sold but excluding coal mined in the state for which a license tax has been received. This state also provides for a license tax on oil producers equal to 1 per cent of the gross value of oil produced. A license tax is also provided on both wholesale and retail dealers in gasoline and distillate equal to 1 cent per gallon for all gasoline and distillate sold; the retail dealer not required to pay the tax if wholesale dealer has paid. 66⅔ per cent of the proceeds of this tax goes to the state and 33⅓ per cent to the counties. The latter amount shall be in proportion to the total number of teaching positions in each county. Montana also imposes an annual license tax of $1 and a further license tax on manufacturers of cement and gypsum equal to 4 cents a barrel for cement and 20 cents a ton for gypsum; the same tax is laid on retail cement dealers but exempts cement and plaster manufactured in the state and upon which a license tax has been paid. The proceeds of the tax on oil, cement and gypsum goes to the state.

pay in lieu of the tax of ⅛ of 1 cent for each 10 cents, a tax of 5 per cent of the amount for which such box or seat is sold for each performance. (5) A tax of ¾ of 1 cent for each 10 cents or fraction thereof paid for admission to any roof garden, cabaret, or like place when such admission charge is wholly or or in part included in the price paid for refreshment or service. Amount paid for admission to be deemed 10 per cent of the amount paid for refreshment or service. Person paying for such refreshment or service to pay the tax. Exemption from this tax granted religious, charitable and educational institutions, military organization, societies for the prevention of cruelty to children or animals, musical organizations not for the profit of members and agricultural fairs. Every person paying the federal tax on admission shall pay an amount equal to 50 per cent of such federal tax. If such amount is paid the tax imposed by this act shall not apply. Proceeds of tax shall be divided one-half to the state and one-half to the counties.

New Mexico provides for the division of the mineral property in the state into three classes for purposes of taxation. The first class, mineral lands held by private owners, is to be further classified into either productive or nonproductive. Definite methods of valuation of such properties are outlined. This law withdraws all mineral property from assessment by local officers and gives the tax commission broad powers and authority to employ valuation engineers. New Mexico also enacts a law which is both retroactive and prospective in its provisions. An excise tax of 2 cents is imposed upon each gallon of gasoline sold in the state from March 17, 1919, to and including the date upon which the act takes effect and an excise tax of 1 cent, formerly 2 cents, per gallon thereafter. Gasoline brought into the state and sold in the original package is exempt from taxation. Each distributor of gasoline is to pay an annual license tax of $25, formerly $50, for each distributing station, places of business or agency, and the proceeds of the tax are to be for the use of the road fund, except $15,000 for a fish hatchery.

Pennsylvania imposes a tax of 1 cent a gallon or fraction thereof on all gasoline sold for any purpose whatsoever except resale. The tax is to be collected from the consumer by the selling firm. 50 per cent of the tax collected is to be credited to the various counties to be used for the construction, maintenance and repair of roads and for payment of interest on bonds issued for road purposes. Pennsylvania also provides for the imposition of a tax of 1½ per cent on each ton of anthracite coal mined and prepared for market in the state. The superintendent in charge of the mine is to make an annual report to the auditor-general showing the gross tons taxable and the assessed value. The provision of the old law which prohibited the owner adding to the selling price of the coal in order to cover the tax or more than the amount of the tax is stricken out of the new law.

West Virginia by a new law imposes a general sales tax of two-fifths of 1 per cent as a privilege tax upon the gross proceeds from the sale of coal, oil, natural gas and other mineral products. The sales tax supersedes the existing privilege tax. All sales up to $10,000 are exempt from taxation.

Intangible Property. Michigan, by a law which relates to the assessment of credits, provides that consideration must be given to the investment of the taxpayer in non-taxable credits, so that no longer will it be assumed that the entire indebtedness of the taxpayer is invested in taxable credits, but that, at least, a proportionate part is in non-taxable credits.

Missouri amends the "secured debts" law by bringing within its provisions notes, bonds, debentures and similar obligations for the payment of money secured by mortgage upon real estate and by providing that the state taxes thereon may be discharged in full by paying the recorder the prescribed tax at the time of filing the instrument for record.

Nebraska, in a new law, provides for a classification of intangibles and their taxation in the locality where listed, on the basis of 25 per cent of the mill rate levies upon tangible property. Bonds and warrants or other evidences of indebtedness of the state or its governmental subdivisions are to be listed and taxed at 1 mill upon the dollar of their actual value. This 1 mill tax and the 25 per cent above noted are to be in lieu of all other taxes upon such intangibles.

Assessments. Michigan, Nebraska and New Jersey provide for a reassessment by the state board of any local assessing district in case of any undervaluations by the local officers. In Michigan, the reassessment is to be made only if the state board, in its review, makes a change of more than 15 per cent above or below the amount approved by the local board. In Michigan all expenses of such reassessment are to be paid by the district reviewed; in Nebraska the state pays the expenses in the first instance and later is reimbursed by the county. In the case of New Jersey the state stands the expense. The purpose of laying the expense of the reassessment upon the local unit is to bring about better assessments. Michigan also provides that forest products left on the shores of any lake or stream for more than six months shall not be deemed in transit but shall be assessed.

Minnesota by a new law requires warehouse men to list for purposes of taxation all goods in storage. The assessor is authorized to enter a warehouse to list such property. Nebraska makes an important change by providing that "all property, not exempt, shall be valued and assessed at its actual value." The previous law required that "all property be valued at actual value and assessed at 20 per cent of such actual value."

North Dakota provides a county option law for the purpose of enabling each county board, upon petition of 50 per cent of the resident freeholders, to compile a schedule and classification of all acre property to be used by the assessors in listing and assessing taxable property. Oregon requires that an assessment upon lands reduced in value by the logging off, or removal of timber, shall be a personal debt against the owner and before any timber is removed the taxes shall be paid.

Poll Tax. California, in harmony with the new constitutional amendment, enacts an alien poll tax of $10 upon all alien males in the state between the ages of twenty-one and sixty years. Certain defectives are exempt from the tax.

Iowa reduces the poll tax, outside of municipalities, from $6 to $5 and authorizes the township trustees to permit the working out of the tax by two days labor in lieu of a money payment. Municipalities are authorized to require payment of a poll tax of not to exceed $5; the tax was formerly $1.50.

Rhode Island extends the poll tax law to include women and increases the previous tax of $1 to $5. Vermont provides that the poll tax shall apply to both men and women and lowers the previous rate of $2 to $1.

Washington adopts a new method in imposing a poll tax. The rate of the tax is $5, four-fifths of which goes to the state and one-fifth to the county. Employers are required to deduct the tax from the wages of employees who fail to pay the tax and the employer, for failure to so do, becomes directly liable. The tax is made a lien upon the real and personal property of the taxpayer. Jurors and witnesses are required to exhibit receipts showing payment of such tax before receiving their fees.

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Budgetary Legislation in 1921. There have been no unusual developments in budget making during 1921; the three new states adopting the system, Indiana, Missouri, and Florida, have followed the established patterns. The tendency toward centralization of responsibility in the governor is evident in the increased supervision over finances in almost every law. Reluctance, however, to give him any real power over various items is obvious in the provisions which require the legislature to consider his recommendations, but do not compel it to abide by his findings. In Nevada the legislature has not been permitted to increase the governor's recommendations but may reject or decrease any item. In the 1921 session, this provision was repealed, making the budget advisory only. Again in Indiana, a constitutional amendment, submitted to the people in September, 1921, empowering the governor to veto items of an appropriation bill, was defeated by a majority of 18,525. On the other hand, the new constitution of Nebraska contains, in the article establishing an executive budget, a

clause permitting increases of items over the governor's recommendation only by a three-fifths, majority vote of each house, and takes from the governor the power of vetoing items so increased. As a result of the adoption of this constitution, all former budget laws have been repealed and a new one enacted. The budget is compiled in the department of finance from estimates submitted by all departments and institutions; after investigation and hearings the director of the department may recommend changes; the budget is then submitted to the governor who may investigate further and change any item. The three-fifths majority clause is incorporated into the law. Closer than usual is the control over expenditures here provided for. The department may investigate at any time as to whether appropriations are being economically used. Before any money becomes available quarterly estimates must be approved by the governor.

Administrative Reorganization. The new administrative code of Ohio provides for a department of finance as one of the eight departments created thereby, with a head appointed by the governor with consent of the senate: the department is in charge of all financial transactions except those of the legislature and judiciary, and compiles the budget from estimates submitted. A division of purchase and printing as well as a division of budget is included in the organization of the department.

A similar reorganization in Washington has resulted in the departments with heads appointed by the governor and the senate, and nine ex-officio administrative committees, the budget being prepared by the finance committee and the department of efficiency. The department is empowered to survey all public offices and institutions with a view to their more economical administration and is instructed to compile daily expenditures of these departments from which the basic statement for the budget is prepared. The budget is referred to the finance committee (formerly called board of finance) composed of the governor, the treasurer and the auditor. Their duties relating to the budget have been unchanged. The important feature in the new system is the further concentration of power in the hands of the governor.

New Laws. Of the five states to enact new laws for budget systems, the experience is new in Indiana, Missouri and Florida. Missouri has created a department of budget which in addition to the compilation of the budget has the duties of the former tax commissioner and has supervision over purchasing and printing. The department is headed by a commissioner of budget appointed by the governor and the senate.

It is divided into two bureaus: a bureau of purchase, having control over state printing as well as purchasing done by nonelective state officers and departments, and a bureau of taxation and estimate. In compiling the budget, the commissioner is empowered to investigate the organization of departments and make recommendations for more efficient administration. Requests from each office are submitted unaltered by him to the governor together with his own estimates. The governor then submits to the legislature the budget embracing these recommendations.

Florida has passed an act creating a budget commission and establishing a budget system for all state expenditures.

For the last two sessions of its legislature, Delaware has had an executive budget. A joint resolution in 1917, provided that the appropriations for that year be made according to a plan outlined in the resolution. The same method was followed in 1919 but without legal authority. In 1921, the features were embodied in a law, the essential points of which follow: Estimates are submitted directly to the governor by all departments. These are subject to his revision except those submitted by the legislature and judiciary. After public hearings the governor may revise the estimates giving reasons for his revision, which are submitted to the general assembly with the printed budget. Hearings and revision take place before the legislative appropriation committees, where all items may be revised except those relating to state debt. The legislature is not permitted to consider any appropriation measure until the budget is passed and must give it precedence over all other legislation after the fiftieth legislative day.

The fourth new law is in Indiana. The constitutional amendment establishing a budget system, passed in 1919 and referred to the 1921 legislature for reconsideration, was not repassed, but in its place a law was enacted. The method adopted provides for the preparation of the budget by the state examiner of the state board of accounts, an office already in existence, filled by an appointee of the governor. Requests of the various departments are filed with him from which he compiles the budget for submission to the governor, containing the requests and his recommendations on each item.

In New York the executive budget has been abolished and a new board of estimate and control created. This board is composed of the governor, the chairmen of the two legislative appropriation committees and the comptroller. The budget of the legislative budget committee which has been in existence since 1916 is continued. Requests for

appropriations are addressed by the departments to both the new board and the old committee and both bodies compile from them their estimates of necessary appropriations. The new board is given great authority over the administration of departments. It is empowered to investigate and to compel changes in the organization of work, unless statutory provisions prevent it, which in its opinion will make for greater efficiency. In the light of this investigation the board's budget will be compiled and submitted to the budget committee which is supposed to consider it in its final report. In addition to budgetary duties the board has power over state purchasing and printing and the disposition of personal property of the state. The board received a lump sum appropriation for its activities and all its employees are exempt from civil service rules.

Budget Law Amendments. New Mexico has included existing budget provisions in the recodification of its tax laws. The same provisions with the power of the legislature to increase items curtailed will be submitted this fall as a constitutional amendment.

In Idaho a bureau of budget and taxation in the governor's office assumes the duties of the department of finance thus bringing all procedure more directly into the hands of the governor although the commissioner of finance is also appointed by the governor. Power of investigation as to efficiency is given to this new budget bureau.

California has a new department of finance with a division of budgets and accounts which prepares a budget without definite legal authority. The final approval lies with the established board of control, a board of three appointed by the governor, which is made the head of the department of finance.

Utah also has a department of finance supervising financial activities and state purchasing. The head of this department is appointed by the governor. Among its duties is the preparation of a biennial budget for submission to the governor. Details of preparation are omitted from the law. The board has close control over department expenditures.

Michigan has transferred existing budget powers from the budget commission, which is abolished, to a state administrative board composed of the governor, the secretary of state, the treasurer, the auditor-general, the attorney-general, the highway commissioner and the superintendent of public instruction. In addition to budgetary duties the new board has a supervisory control over all administrative departments, purchasing and state construction.

The Oregon budget formerly prepared by the secretary of state is now given to the state board of control composed of the governor as chairman, the secretary of state and the treasurer. The actual work of compilation remains with the secretary of state but the recommendations on items are made by majority vote of the board. It is only an advisory document when printed.

Among the minor changes in the various states, that of North Carolina is most interesting and unusual. It gives to the minority party a representative on the budget board. The board now consists of the governor, the chairman of the legislative finance committees and a member of the minority party, a legislator, appointed by the governor.

Minutes of the South Dakota budget board until now have been open to public inspection at all times. By a 1921 law they need not be made accessible until after the budget has been transmitted to the legislature. The same law provides for meetings of the board before special sessions of the legislature and at the governor's call. Montana's amendment gives more power to the compiling board, permitting it to include its recommendations in its budget instead of being a mere compilation of requests as before.

Local Budgets. Both county and city finances have received some attention. A system of commission manager government for Wyoming cities of over 1000 population has been established, including an itemized budget compiled in the department of finance for guidance of the commission in its appropriations. Publication of the commission's appropriation bill with a parallel comparison with the preliminary estimates gives the necessary publicity. Kansas requires boards of education in cities over 95,000 to prepare an itemized budget before making tax levies and requires expenditures to be as defined in the budget.

Oregon has passed a comprehensive local budget law requiring the preparation of a budget by all municipal corporations, meaning all public corporations having power to levy taxes. The itemized budgets contain the estimated revenue as well as the estimated expenditures, and form the basis of the tax levy. The preparation of the budget is done by budget committees, the same size as the local levying boards, composed of citizens not employed by any municipal corporation. Publicity is provided and public hearings are permitted.

Nevada, already requiring budgets from cities and most of the tax-levying bodies within the state, has added county high school and educational districts to the number.

In addition to Oregon which includes counties in its local budget law, New Mexico, Montana and Arizona have strengthened their county finances by requiring budgets. County commissioners of New Mexico are required to submit budgets to the state tax commission which is authorized to investigate and revise all items. When finally approved, the budget is returned to the county commissioners and is binding on them in all instances. County commissioners are also compelled to make preliminary estimates for the expenditures of road and bridge funds to assure a fair distribution in all parts of the county. County officers of Montana are required to submit their estimates of expenditures, and at an advertised time the board of county commissioners revise and approve the estimates, giving opportunity for hearing to all interested people. Expenditures are limited by this budget, as finally approved.

RUTH MONTGOMERY.

Legislative Reference Section,
New York State Library.

NOTES ON MUNICIPAL AFFAIRS

EDITED BY F. W. COKER

Ohio State University

The New York City Election. Four years ago on January 1, John F. Hylan became mayor of New York City, having overwhelmingly defeated Mayor John Purroy Mitchel, candidate for reëlection on the fusion ticket. Mayor Mitchel was known throughout the country as the man who had given New York an honest and efficient administration; he received during his campaign the cordial support of the great newspapers with the exception of those under Mr. Hearst's control; hence it was but natural that the people of the country in general, and editors of newspapers and magazines in particular, should shake their heads dubiously when the voters of our largest city decisively rejected Mitchel in favor of Hylan, protégé of Hearst and candidate of Tammany Hall. Was it possible to retain faith in popular government in the face of a result such as this?

Naturally, Mr. Hylan's administration was closely watched by many voters of the city who expected to find not only inefficiency but also gross corruption. The newspapers remained generally hostile to the mayor. When he was not ridiculed and pictured as a bungler he was accused of sinister purposes. His appointments were often condemned. It was said that he appointed Tammany politicians and personal friends to office. Of course in doing so he was merely following a well-established American custom.

New York, like many other cities, has had considerable difficulty in its dealings with public utility corporations. When the war came prices rose enormously. Transportation companies, formerly paying large dividends, now confronted with rising costs, made demands for increased fares. The mayor and his colleagues rejected all such proposals. They were blamed for failure to work out definite plans for the solution of the transportation problem and were frequently called obstructionists. The fact remains, however, that while in many cities car fares were increased and in some doubled, in New York the fare is still five cents. The great majority of the people believe that the mayor's stand is responsible for this.

In the 1920 election Harding carried New York by a majority of more than 1,000,000. He even carried New York City by a majority of 439,000. Naturally Republicans were enthusiastic. It was confidently asserted that the time had come for a straight Republican ticket in the 1921 mayoralty election. The fact that Governor Miller's plurality over Alfred E. Smith was less than 75,000 in the state, and that Smith had carried the city by more than 320,000, was for the time being overlooked. Before long, however, it was realized that the chances of defeating Hylan depended upon a sincere coalition of Republicans and independent Democrats.

The 1921 legislature, overwhelmingly Republican and extraordinarily submissive to Governor Miller's leadership, made the reëlection of Mayor Hylan a practical certainty. Two measures especially strengthened the position of the mayor. The public service commissions were reorganized and a state-appointed transit commission with complete authority over the subject of transit in New York City was established. Secondly, provision was made for a legislative committee to investigate the conduct of the Hylan administration. The transit law was attacked by the city administration and by local Republican leaders because it practically deprived the city of all control over its transportation system and because it was believed to pave the way for an increase in fare.

The transit commission at once began a thorough investigation of its problem and on September 30 issued a preliminary report recommending a plan for municipal ownership of all railway lines in the city, payment for the property to be made on the basis of an honest valuation irrespective of the present capitalization and book values. Fares were to be based on the actual cost of operation, and there was to be no increase unless operation under the new conditions should demonstrate its necessity. Upon the full establishment of the plan, the transit commission was to be abolished.

These proposals of the commission were at once attacked by the city administration though they were quite generally approved by the press. The comptroller saw in the plan only one good provision—that for the abolition of the transit commission, which he thought, however, should be put into effect at once. The mayor's commissioner of accounts detected a scheme for unloading on the city worthless lines and for an eventual eight or ten cent fare. It was also claimed that the issuance of the report a few weeks before the election was designed to fool the people into the belief that the commission was in favor of the five cent fare and thus to weaken the mayor's chief campaign issue.

The legislative investigating committee, headed by Senator Meyer, did not succeed in convincing the public that the Hylan administration was very corrupt and inefficient. On the contrary it did convince the people that its chief purpose was to produce campaign material and to "get Hylan" at any cost. Although the committee's examination of city officials brought to light some things which did not tend to increase public confidence in the management of certain city departments, yet its methods were so apparantly partisan that the investigation proved a boomerang and undoubtedly strengthened the mayor with the voters.

The municipal primary elections were held on September 13. In the Democratic primary Mayor Hylan and Comptroller Craig were renominated without opposition. Murray Hulburt, commissioner of docks, was nominated without opposition as president of the board of aldermen. The only serious contest was that for the position as president of the borough of Manhattan. The central Tammany organization was successful, though its majority was small.

After numerous conferences during the summer months Henry H. Curran, president of the borough of Manhattan, was endorsed for mayor by the Republicans and various independent groups desirous of fusion against Tammany. Senator Charles C. Lockwood and Vincent Gilroy, an independent Democrat, were endorsed for comptroller and president of the board of aldermen. These three candidates won in the Republican primaries by handsome pluralities. The vote in the mayoralty contest stood as follows: Curran, 103,174; LaGuardia, president of the board of aldermen, 37,880; Haskell, anti-prohibition candidate, 29,468; Bennett, ex-senator, 4742. Lockwood and Gilroy received pluralities even larger than Curran's.

From the very beginning of the campaign it was clear that the odds were in favor of Hylan. He was loyally supported by Tammany Hall. This insured the advantage of perfect organization. The mayor and his supporters made much of their stand against corporation influence, always a popular position. Governor Miller and the transit commission were pictured as tools of sinister interests seeking to impose on the people of the city millions through increased fares; and Mr. Curran, despite his vigorous denials, was made to appear the agent of the governor seeking to deprive the city of its last vestige of control over an important public utility. The Meyer committee, called the "Mire committee" by the Mayor's friends, was accused of persecuting the administration for partisan purposes. The Hearst papers exerted a

powerful influence in the mayor's behalf. Every day their columns carried laudation of "John Faithful," "the people's mayor," and scathing satire of his opponent, effectively labelled "the Subway Son."

The Republican-Coalition groups entered the campaign with serious handicaps. Some Republican leaders had favored a straight party contest, and after the election was over serious complaints were made against the regular organization for its alleged lukewarmness toward coalition. Nor did the Coalition candidates arouse much public enthusiasm. Mr. Curran proved himself a far from brilliant campaigner. He strove manfully to convince the people that he also was for a five cent fare, but to many this seemed like trying to steal Hylan's issue. He attacked the mayor for not having actually retained the five cent fare since certain transfer privileges were abolished. This fell flat. On the whole Mr. Curran's position on the transit issue was exceedingly awkward. He was also greatly embarrased by the fact that the people thought him the governor's choice for mayor. This alone would have been enough to defeat him. Curran was strongly supported by such important newspapers as the *Times*, the *World*, the *Tribune*, the *Herald*, the *Evening World*, the *Evening Post*, the *Sun*, and the *Telegram*.

The election resulted in an overwhelming victory for the mayor and the Democratic ticket generally. Every single member of the newly elected board of estimate and apportionment, the city's actual governing authority, is a Democrat. Hylan's plurality was almost 418,000. The vote for mayor stood as follows: Curran, Republican-Coalition, 336,888; Hylan, Democrat, 754,874; Panken, Socialist, 83,209. Comptroller Craig's plurality was 249,252. Hulburt was elected president of the board of aldermen by a plurality of 268,728. The Democrats gained also fourteen seats in the board of aldermen, which will have fifty Democratic and fifteen Republican members.

There is little doubt that the five cent fare issue was the greatest single factor in determining the result of the election. The voters were unalterably opposed to an increase in fare. Moreover they believed that the mayor's firm stand agaist such increase was the reason for the present five cent fare. Whether the mayor's stand was based on a conviction that the five cent fare was sufficient or that it was the best way to secure votes did not seriously concern them. Whatever his motives were, he had done what they wanted done. After the election was over even traction officials stated that they considered the vote a decided rejection of their arguments for more than the present

fare. Rightly or wrongly, the masses of the voters hailed the re-election of Hylan as their victory over the "upper classes."

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The Cleveland Election and the New Charter. The Cleveland municipal election of November 8, 1921, will likely go down in history as one of the most notable in American annals. The big issue of the election was the charter amendment embodying the manager plan with a council elected by proportional representation; but in addition to this the voters were obliged to elect a mayor from a field of seven candidates by use of the preferential ballot, to choose a chief justice and four judges of the municipal court, to select four members of the board of education, to elect a councilman in each ward, to vote on the issuance of bonds for the construction of a public library building, and a jail and criminal courts building, and to vote upon three proposed amendments to the state constitution. Only the manager amendment and the mayoralty contest possess other than local interest.

The amendment providing for the manager plan was placed on the ballot by initiative petition, which was inaugurated by a committee of citizens representing various civic and commercial bodies. The willingness with which all classes of people signed this petition, and the slight difficulty experienced in procuring a sufficient number of signatures, should have been a portent of the outcome of the election. But the opponents of the amendment were so confident of its failure and the proponents were so uncertain of their strength, that the possibility of its success was not seriously contemplated by either side until near the end of the campaign; and when it carried by a majority of almost twenty thousand there was universal surprise. The factors which contributed to the victory of the amendment were numerous and complex, but not least among them were the disgusting politics of the mayoralty campaign and the incredible stupidity of the opponents of the manager plan.

Entirely apart from the way in which it was adopted, the manager amendment will command widespread interest among students of government. What the amendment actually does is to repeal all but the first two sections of the city charter and substitute for the repealed sections 187 new sections which in reality constitute a new charter for the city. So far as the writer knows, this is the first instance in our municipal history of complete charter revision by the use of the initiative. For this reason, the new charter is unique in another

particular. Since it was unnecessary for the charter to gain the approval of a charter commission, it is unaffected by the concessions to expediency and the compromises which are usually characteristic of the decisions of such a body. In its form and content it is largely the work of a single expert draftsman, and possesses, therefore, a degree of internal consistency which is rare in city charters.

The amendment provides for a council of twenty-five members, elected from four districts. These districts are entitled to elect to the council seven, five, six, and seven members respectively; and within each district the Hare system of election is to be used. The variation in the number of members from different districts is accounted for by the fact that they are unequal in population, the prime object in laying out the districts being social and economic homogeneity rather than equality of population. The council is obliged to choose a city manager as the chief executive of the city, and the provision reads that "he shall be chosen solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the city or state." It is provided also that no member of the council shall be chosen as city manager. The city manager is given power to make all appointments in the administrative service not otherwise provided for in the charter, and the council is expressly forbidden to interfere directly or indirectly with the appointments of the manager. Indeed it is provided that, except for the purpose of inquiry, the only way the council may deal with the administrative service is through the manager. While space does not permit a discussion of further details, it should be said in passing that there are exhaustive provisions relating to budget procedure, public utilities, civil service, and assessments for local improvements.

The amendment will become operative on January 1, 1924, and Cleveland will then become the nation's greatest experiment station for attacking the problem of efficient democracy. It is a good omen that the mayor who takes office on January 1, 1922, is known to be favorable to the manager plan and is determined to do all in his power to prepare the way for it.

The mayoralty election was a triumph for non-partisanship in municipal elections. The system of nominations by petition and preferential voting was incorporated in the Cleveland charter of 1913 for the purpose of fostering nonpartisanship, but until the election of 1921 it had precisely the opposite result. The party organizations soon discovered that although they could not nominate candidates

directly, they could endorse candidates nominated by petition and throw the whole force of the party organization behind such candidates. Furthermore it was discovered that the preferential-choice scheme could be turned to the advantage of the party by passing out the word to all regulars to vote only for a first choice. Thus the alternative votes of the independent voters would tend to build up the aggregate vote of the party candidates, but the regular party voters would contribute nothing to the aggregate vote of the independent candidates. As the field was likely to be divided between several candidates, the party candidates had by far the best chance to win. This explains perhaps why from 1913 to 1921 the "Mary Ann" ballot resulted in the election of not a single independent candidate for mayor.

In 1921 the same result was anticipated. There were seven candidates in the field. Two had been endorsed by the party organizations and were running frankly as organization candidates. Of the five independents, two were of Democratic antecedents and two were of Republican antecedents, while one stood as a Socialist. It looked as if the first choices of the independent voters would be widely scattered, and the organization candidates reap a correspondingly large share of their second and other choices. But the unexpected occurred. The voters repudiated both organization candidates, and gave Mr. Fred Kohler, an independent Republican, more first choice votes than any other candidate, though not the majority of first choices necessary for election on first choices alone. In fact it proved necessary to count the aggregate vote before an election could be declared, but the result was never in doubt because Mr. Kohler was in the lead all the way through. Mr. Kohler has been the center of so much controversy and publicity that he is easily the best known figure in Cleveland. Under the régime of Tom L. Johnson he became chief of police and achieved a national reputation for his successful administration of that office. He was continued in office under Mayor Newton D. Baker, but following charges of gross immorality and conduct unbecoming to an officer he was dismissed from the force. He thereupon entered politics to seek vindication and was a candidate for various offices, without success until 1918, when he was elected county commissioner. The exceptional majority by which he was reëlected to this office in 1920 undoubtedly encouraged him to enter the race for mayor. The election of Mr. Kohler to the office of mayor at this time is open to various interpretations. Despite the charges against the character of his private life, Mr. Kohler had achieved a reputation for being an honest,

efficient and independent public official, and he was the only independent candidate who was sufficiently well known to compete with the organization candidates. It is natural then that the people in repudiating both organizations should turn to Mr. Kohler.

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Elections in Other Cities. In Boston, the mayoralty election (held December 13, 1921) resulted in a surprising upset. Ex-mayor James M. Curley (who was defeated for reëlection four years ago by Mayor Peters—the "reform candidate") was elected mayor, receiving a plurality of about 2700 votes over John R. Murphy—candidate of the Good Government Association. Two other candidates received relatively few votes. The campaign was exceedingly bitter. Mr. Curley was opposed by all except one of the Boston newspapers, and he had little public assistance from any of the recognized political leaders. At the same election three members of the city council were elected; of these two are supposed to be sympathetic with Mr. Curley, and the third successful candidate is one of the three candidates supported by the Good Government Association.

At the November, 1921, elections in Detroit Mayor James Couzens was reëlected by a vote of nearly two to one. The vote is regarded as an unmistakable popular endorsement of the municipal ownership program of his administration; and at the same election the voters approved two charter amendments to facilitate the extension of the municipally owned street-railway lines.

In Indianapolis, Samuel L. Shank, Republican, was elected mayor by a large plurality. Despite the recently enacted law of Indiana making ineligible for state or city office any person who has been convicted of violating national law, both Terre Haute and Muncie elected as mayors men who had been convicted in the United States courts for offenses in connection with elections.

In Pittsburgh, William A. Magee, Republican, former state public service commissioner, was elected mayor by a large majority. In Scranton, Pa., a Democratic mayor was elected; and in Lancaster the Republican incumbent was defeated by a Democratic coalition candidate, this being the first defeat in 25 years suffered by the Republicans in Lancaster. In Schenectady, N. Y., Mayor George R. Lunn was reëlected for a fourth term. In Louisville, a Republican was elected mayor again, despite the Democratic landslide in Kentucky. In

Bridgeport, Conn., Mayor Wilson, Republican, who has been mayor for ten years, was defeated by his Democratic opponent.

In Cincinnati, the Republicans won a sweeping victory. In Dayton, the independent candidates for the city commission defeated the Socialist candidates by about a three to one vote. In the municipal elections in Ohio generally, there were numerous women candidates. Over forty women were candidates for municipal offices (not including candidates for school boards) in Cleveland and its suburban municipalities; of these fourteen were successful, being elected to minor offices; all thirteen women candidates for the Cleveland council were defeated. In Cincinnati two women were elected to the city council; and women were elected as mayors in several small municipalities.

Some notable results also appeared in several up-state cities in New York. The city of Albany has long been considered the political preserve of William Barnes. For some twenty years the Republicans continuously managed the city. During the last few years, however, their administration was under fire. Serious fault was found with the department of assessments on the ground of alleged favoritism, and during the recent campaign this became one of the important issues. It was also claimed that corruption was rife in the making of city purchases, notably in the purchase of coal. The Republicans nominated for mayor William Van Rensselaer Erving, who for many years had been an officeholder under the Barnes régime. He had served as secretary of the municipal civil service commission, as commissioner of public safety, and as court reporter. The Democrats argued that this was sufficient evidence of his subserviency to Barnes. The Democratic candidate for mayor was William S. Hackett, president of one of the city's largest banks. The campaign was exceedingly bitter and full of personalities. The Democrats made an issue of the continued domination of the Barnes machine. The result of the election was a victory for the Democrats. Hackett was elected mayor by a majority of more than 7000, and the other Democratic candidates for city and county offices, by majorities ranging from 200 to 4000. The common council will also be Democratic.

In Syracuse, the home town of Governor Miller, the Republican ticket was defeated for the first time in fifteen years. The Governor actively participated in the contest in behalf of the Republican candidates. John H. Waldrath, Democrat, was elected mayor over Deforest Settle, Republican, by a plurality of about 7000.

Other important New York cities that elected Democratic mayors were Troy, Schenectady, and Yonkers. In thirty-seven mayoralty campaigns, Republicans were successful in twenty-two, and Democrats in fifteen.

Earlier in the year 1921, notable elections were held in St. Louis, Milwaukee, Chicago, and Minneapolis, besides the recall election in San Francisco. At the spring election in St. Louis, Mayor Henry W. Kiel was reëlected for a third successive term of four years. He had won the Republican nomination in the primaries over Colonel Robert Burkham—head of the local American Legion—who was supported by the "reform" element of the party and by the leading Republican newspapers. In the election, the Democratic candidate had the support of the leading newspapers—Democratic and Republican of many leading Republicans of national reputation, and of the leading civic organizations of the city. In spite of this opposition Mayor Kiel won the election, although by a considerably smaller margin than in the election four years ago. At the same election in 1921, the "reform" element elected four of their five candidates for the board of education.

At the April election in Milwaukee, the Socialist candidates were defeated, with the exception of Mrs. Victor Berger, who was elected member of the school board. Emil Seidel, former Socialist mayor, was defeated for alderman-at-large by a nonpartisan candidate.

In Chicago, the biggest reverse which the Thompson-Lundin organization has yet received was that given in the judiciary election held in June. At that election the entire coalition ticket (supported by Democrats, Independents, and independent Republicans) was elected over the Republican (Thompson) ticket. The Thompson organization subsequently suffered another reverse in the defeat of their special municipal-ownership and traction-home-rule bills in the state legislature.

At the Minneapolis election in June, ex-Mayor Van Lear, Socialist, was defeated by Colonel George Leach—an overseas veteran and unofficial Republican candidate. Seven Socialist aldermen were elected. These, with the five hold-over Socialists, give that element a total of twelve out of the twenty-six aldermen.

An interesting small town election was that held in the spring in West Hartford, Conn., at which the Hare system of proportional representation was used for the first time in New England. The recently adopted charter of that town provides for a council of fifteen to be elected from four unequal districts, and allows each council to

fix the rules of election for the next subsequent election, the charter itself having prescribed the Hare system only for the first election. At this first election there were a total of thirty-two candidates for the fifteen seats. The election and counting were carried out without much confusion and the results seem to have fulfilled the hopes of the advocates of the Hare system.

In San Francisco, an election was held in the spring for the recall of two police court judges. The recall movement was the result of agitation by the local bar association and various civic organizations, following revelations by the grand jury implicating the two judges in various abuses connected with bond-broking and the manipulation of jury-picking. Following an exceptionally bitter campaign, in which organized labor joined with the forces opposing the recall, the election resulted in the defeat of the two judges by considerable majorities.

Another recall election in which the independent element was victorious over the machine element was that held in Wildwood, N. J., in July. The three members of the city commission were recalled, and independent candidates elected to their places by overwhelming majorities.

Charter Revisions. At the November, 1920, elections important charter changes were approved in Chicago, Minneapolis and San Francisco, and proposed changes were defeated in Boston and in Ashtabula, O. In Chicago the voters adopted by a large majority the amendment which will increase the number of wards from 35 to 50 and at the same time reduce the size of the council from 70 to 50 members by providing for one councilman, instead of two, for each ward. A beneficial effect of the amendment will come from the reapportionment made necessary by the amendment, which will have important political consequences by removing the glaring inequalities in population among the different wards such as have existed under the old apportionment.

In Minneapolis, the voters adopted the new charter, which, though not changing the previously existing form of government, gives to the voters of the city the power to change that form in the future without the sanction of the state legislature. A well planned movement has been set on foot to utilize this power and adopt a new charter changing the form of government. A large citizens' committee, representing over two hundred civic organizations, has been formed to conduct a campaign of investigation and education for the new charter.

In San Francisco twenty-six amendments were voted upon. Among those adopted, the following are the more important: making possible a system of pensions for city employees; providing for the selection of members of the school board through a system of nomination by the mayor and approval by the voters at the polls; authorizing the city administration to negotiate for the purchase of the United Railways—to be combined with the present municipal railway system, the plan of purchase not to be effective until approved by the voters.

In Boston, the proposed amendment providing for a council of fifteen elected by wards, to replace the council of nine elected at large, was decisively defeated; the proposed change had been generally supported by the political organizations and opposed by the independent civic organizations. In Ashtabula the amendment which would have abolished proportional representation and the city-manager feature was defeated by a comfortable majority.

In 1921 important steps were taken affecting the charters of Buffalo, Pittsburgh and Scranton, Columbus, New York, St. Paul, Omaha, Toledo and Cleveland, besides the various city-manager cities mentioned below. Commission government was saved for Buffalo by the veto of Mayor Buck. The state legislature had passed a bill to abolish the Buffalo commission form but was unable to pass the bill over the mayor's veto.

A proposed amendment to the Pennsylvania constitution, for restricted home rule for cities and authorizing optional laws for cities and boroughs, has been passed by the legislature, and will be voted on in 1922. This provides that: "Cities or cities of any particular class may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject however to such restrictions, limitations and regulations as may be imposed by the legislature. Laws also may be enacted affecting the organization and government of cities and boroughs which shall become effective in any city or borough only when submitted to the electors thereof and approved by a majority of those voting thereon."

The Pennsylvania legislature, having previously abolished nonpartisan elections for cities of the third class, has now abolished them for cities of the second class—namely, Pittsburgh and Scranton. The latter act seems to be the result of the bitter factional struggle within the Republican party in Pennsylvania—the faction led by Governor Sproul opposed by the Oliver-Grundy faction; the latter faction, under the nonpartisan system, had displaced the old machine leader in

Pittsburgh. The governor's faction, which after a violent and dramatic fight wrested control of the legislature from the opposing group, retaliated upon the latter by enacting the measure which restores partisan elections in Pittsburgh.

The voters of Columbus, O., at an election held in August, defeated a proposed amendment to abolish the preferential ballot for the election of mayor, auditor and attorney.

Following several investigations and proposals from various quarters looking to a revision of the charter of New York City, the state legislature in 1921 passed an act providing for a commission to draft and submit to the legislature a new charter, the commission to be composed of fifteen residents of the city, including four officers of the city government—namely, the mayor, comptroller, one borough president, and one alderman. The commission is also authorized to prepare an administrative code supplementary to the charter, and is required to report not later than the legislative session of 1923.

The most important decision of the recent November elections was that made by the voters of Cleveland in adopting the charter revision providing for a city manager with a council elected by proportional representation. Cleveland is much the largest city to have adopted either of these features; the revision is described above.

In Toledo, at the November election, the voters defeated both of two alternative proposals for substituting a small council of seven for the present council of 20 members elected by wards; one proposal provided for election at large, the other for election by districts.

A new charter for St. Paul, drafted by a charter commission, was submitted to the voters on December 29. This proposed a complex scheme of organization with a large number of departments and several boards, in place of the commission plan. The new charter was defeated.

The legislature of Nebraska has passed a new charter for Omaha, revising the commission government of that city.

There are at present about 250 cities in the United States having the city-manager form of government. Six of these (Akron, Dayton, Grand Rapids, Nashville, Norfolk, and Houston) are cities of over 100,000 population. Among important cities which have recently adopted this form are the following: Long Beach, Pasadena, and Sacramento, Cal.; Colorado Springs; New London and Stratford, Conn.; Tampa and Miami, Fla.; Brunswick, Ga.; Michigan City, Ind.; Atchison, Kan.; Bay City, Mich.; Durham and Greensboro, N. C.; Lima, Cleveland Heights, Middletown, and Cleveland, O.; Carlisle, Pa.; Nashville, Tenn.; Houston, Tex.; Clarksburg and Morgantown, W. Va.

The Sacramento charter follows closely the model charter of the National Municipal League, and provides for a council of nine members elected under the Hare system of proportional representation; it is the largest city in the United States now operating under that system.

The Nashville charter supplies what orthodox advocates of the city-manager plan consider a mongrel form; it provides for a council of fifteen elected by wards, and for a mayor elected by the council for an indefinite term and serving both as titular mayor and as city manager, his appointments requiring confirmation by the council.

The city-manager plan has recently been rejected by the voters of New Haven, Conn., Canton, O., and Iowa City, Ia.

At an election in Kalamazoo, October, 1921, the proposed new charter providing a "federal" form to replace the city-manager form, was defeated by a comfortable majority.

In Missouri, an amendment to the state constitution was adopted in 1920 authorizing the submission to the voters of Kansas City of a charter closely similar to the model charter of the National Municipal League.

Several additional states have passed optional laws for the commission and city-manager forms of government. An Indiana law authorizes either commission or commission-manager forms. Texas authorizes commission government for cities of less than 5000; and New Mexico for cities of 3000 to 10,000. Arkansas provides for commission-manager government for cities of the second class with a population of 2500 to 3000; Missouri for cities of the third class; Illinois for cities and villages of less than 5000; and Wyoming for cities and towns over 1000. An optional city-manager law failed of passage in the New Jersey legislature.

Some progress is being made in the reform of county government in the direction of county home rule, county-city consolidation, and the county-manager form of government. The proposed county-manager charter for Baltimore county, Maryland, was defeated at the November, 1920, election. A board of freeholders has been elected to frame a charter for Sacramento county, California, the expectation being that a county-manager form will be submitted. The board of freeholders for Alameda county (including the cities of Oakland, Berkeley and Alameda, besides some rural territory) has submitted a charter providing for a board of seven elected by districts, and a manager to be chosen by this board; it leaves the district attorney, assessor and auditor elective, but consolidates other city and county offices

and functions under the board. In New York a constitutional amendment permitting the legislature to provide, subject to the approval of the respective counties, new forms of government for Nassau and Westchester counties (adjoining New York City) was adopted at the November, 1921, election. The legislature is authorized to provide for the transfer of town functions to the county governments in these counties. Two bulletins describing the conditions in these counties making reorganization necessary have been issued by the New York State Association. Petitions have recently been circulated in Michigan to secure the submission to the voters in November, 1922, of a proposed constitutional amendment providing for county home rule. Consolidation of city and county government under the manager plan has been proposed for Toledo in a report prepared by the Toledo chamber of commerce in coöperation with other civic organizations of that city.

Municipal Transit Problems. By far the most significant act of the past year in the regulation of municipal transit affairs is the law passed by the New York legislature for the control of the traction situation in New York City. It is a drastic and radical measure and has many important political, administrative and constitutional implications and consequences. The measure was passed under the frank and insistent leadership of Governor Miller (Republican) and was bitterly opposed by the New York City administration (Democratic) as well as by many New York City Republican representatives and leaders, and was strongly disapproved by the independent New York City Club. The constitutional requirement that laws applying to only one city must be submitted to the mayor of that city for approval or veto, was evaded by applying the law to "all cities containing a population of more than a million inhabitants." The law destroys, almost completely, local control of transportation in New York City. It creates a state commission of three members, appointed by the governor, and confers upon the commission practically all the powers formerly possessed by city agencies; the commission seems to be given about all the authority which the state, under its police power, could vest in an administrative agency. The commission has power to grant fare increases. It has the power to rewrite the contracts with the private companies for the operation of the city-owned subways, leaving to local agencies no limiting power in this connection; it can thus destroy all rights which the city now holds under existing contracts; on the other hand, the rights of the companies can not be modified except with the consent of the companies affected. The city retains the right to refuse assent

to new routes and to refuse the use of municipal credit for transit purposes.

The supporters of the measure defend it as a measure that will provide a strong agency to investigate and deal with conditions which demand forceful, fearless, comprehensive, expert direction, and on the ground that such results can be secured only by creating a unified agency endowed with broad powers, freed from interference by the city administration and from fear of local popular disfavor. The law is an extreme application of the legal theory of municipal governments as merely agencies and creatures of the state. It seems beyond question that the local unpopularity of the law contributed greatly to the sweeping victory of the Democrats in the November city election.

As members of the commission, the governor appointed the following well known men: George McAnenny, formerly president of the New York City board of aldermen, chairman; Major-general John F. O'Ryan; Leroy T. Harkness, a lawyer of Brooklyn, who had been connected with one of the two state public service commissions. The two first named are classed as Democrats, the last as Republican. In September, the commission issued its preliminary report embodying a tentative plan for combining all the city transportation facilities—now operated by about thirty companies—into three combined systems to be operated by three companies, with a fourth company to exercise financial control over the others; the city would be the legal owner of the properties; the present owners of the securities would receive bonds of the operating companies in exchange for their securities; the city would have no voice in the operating companies. On the board of control three members were to be appointed by the mayor, three by the investors and a chairman selected by the two groups.

The commission believed that substantial economies could be effected by consolidation and the elimination of numerous leasing and operating companies, with the duplication of overhead and separate traction policies and purchases.

The commission has more recently proposed plans for the expenditure of $200,000,000 for new subways, including a moving platform to replace the present shuttle between Times Square and the Grand Central terminal; it suggested a one cent increase over the present five cent fare as a possible means of creating a working credit for the new construction.

In Detroit, at an election held last April, the voters rejected a service-at-cost proposal submitted by the Detroit United Railways and approved

a proposal for the city to buy twenty-five miles of additional trackage and to acquire and operate trackless trolley busses. The city is continuing to construct new tracks for the city-owned lines; and there are indications that the company is now preparing for an entire transfer of its properties to the city.

In Toledo the ten-year old controversey between the city and the street-railway company was brought to at least a temporary close by the result of the election in November, 1920. At that election the voters approved the grant of a service-at-cost franchise to the Community Traction Company—a newly formed corporation which takes over the street-railway holdings of the Toledo Railways and Light Company. The new franchise became operative February 1, 1921. The city's interests are in the hands of an unpaid commission acting through a paid street-railway commissioner. Under the terms of the franchise fares were immediately reduced from seven to six cents; but six months later the fares were restored to seven cents (retaining the one-cent charge for transfers), because of the decrease of the stabilizing fund to the point at which the rate increase is stipulated for in the franchise.

A supplement to the *National Municipal Review* for February, 1921, is devoted to the subject of "Service at Cost for Street Railways;" it contains articles on the Boston, Indianapolis, and Cleveland franchises, and an article on "Service at Cost versus Municipal Ownership."

In Cincinnati, the operation of the service-at-cost franchise adopted in 1918 has continued to produce successive rises in fares. The fare in June, 1921, had risen to nine cents, and the condition of the reserve fund indicated that further increases would be inevitable, under the conditions of the franchise. Thereupon the city council passed an ordinance providing that the overdue license fees for 1920 and 1921 are not to be paid unless in 1922 and thereafter the revenues produce a surplus therefor, that fares are not to be used to produce such a surplus, and that when the fare is over seven and one-half cents payments into the reserve fund are no longer required. This action was regarded as inspired by the desire of the party in power to escape the unpopularity which they feared might overwhelm them in the November election if further fare increases were not prevented.

In Seattle, where practically the entire street-railway system has been municipally owned and operated since April, 1919, the economic conditions have continued to be unfavorable to financially successful municipal operation. The investigation by the mayor indicated that, although there had been no corruption incident to the transactions

resulting in the purchase, a greatly excessive price had been paid by the city. The Seattle city council has recently, over the opposition of the mayor, voted to employ Peter Witt, former street railway commissioner of Cleveland, to make a survey of the municipal railway, and for a bond issue of $680,000 for improvements and extensions of the system.

Two recent instances of the extension of municipal operation in the transit field are to be found in the taking over by the city of San Francisco of the temporary operation of a defunct steam railway serving certain industrial concerns in that city, and in the taking over by New York City of the temporary operation of the lines of a railway on Staten Island which the company, in the hands of a receiver, was proposing to discontinue. Grover H. Whalen, commissioner of plants and structures of New York City, recently testified before the state transit commission that the New York venture on Staten Island netted the city a profit of $4800 for the first fiscal year, ending November 30.

Upon the expiration of the thirty-year franchise under which the Toronto Street Railway Company has operated, the Toronto city government, on September 1, 1921, took over the ownership and operation of the company's system, in accordance with an earlier vote of the people calling for that action.

The state public service commission of Pennsylvania has increased car fares in Philadelphia to seven cents, in violation of the franchise which provides that fares can be changed only by consent of both city and company. The power of the commission is supposed to be sustained by decisions of the Pennsylvania courts which hold that the commission may allow increases where rates agreed upon between a city and a company prove inadequate.

Kansas City, Mo., has passed an ordinance prohibiting the operation of jitneys on streets upon which electric railways operate.

In Minnesota a law has been passed authorizing street railways to exchange their franchises for indeterminate permits, to continue until the city buys the railroad property at a value fixed by the state railway and warehouse commission, or until modified or terminated by the legislature.

Kansas has again established a public utility commission, which was abolished by the industrial relations court law, and has transferred to the new commission all the powers and duties of the industrial relations court in regard to public utilities.

Organizations and Publications. In 1920 the National Municipal League and the American Civic Association entered into an agreement for close coöperation for one year, with the plan to consider complete consolidation if the coöperation proved successful. The *National Municipal Review* has been publishing the literature of the A. C. A. The *Review* has also, by agreement with the Government Research Conference, added a section, in its department of notes and events, devoted to the notes issued by the conference. These notes cover the activities of the various research bodies of the country. Mr. Henry M. Waite has been chosen president of the league, succeeding Charles E. Hughes, who resigned following his appointment as secretary of state. The *Review* has temporarily returned to a bimonthly, instead of a monthly, issue; on intervening months brief supplements devoted mainly to single subjects will be issued.

At the twenty-seventh annual meeting of the National Municipal League, held at Chicago in November, a session was devoted to the question, How should metropolitan centers be represented in the state legislature? Papers were read as follows: "Present restrictions on municipal representation," John M. Mathews, University of Illinois; "Is restriction fair?" Charles S. Cutting, Chicago; "Why cities menace the states," Lee Mighell, Aurora. Other sessions were devoted to the "financial plight" of our cities; the question whether city-manager government is applicable to our largest cities; criminal justice in American cities, with special reference to the Cleveland survey; the high cost of housing; and municipal zoning.

The 1921 meeting of the Government Research Conference was held in Philadelphia in June. Frederick Gruenberg, director of the Philadelphia bureau of municipal research, was elected president; R. E. Miles, director of the Ohio Institute of Public Efficiency, vice-president; and L. D. Upson, director of the Detroit bureau of governmental research, secretary-treasurer (reëlected). Mimeographed copies of the proceedings can be obtained from the secretary. The 1922 meeting of the conference will be held in Cleveland in June.

In September, 1921, a conference on the problems of counties and small towns was held at Chapel Hill, N. C., under the joint auspices of the University of North Carolina and the National Municipal League, with the coöperation of the North Carolina Municipal Association. The university has for several years, through the organization of local county study clubs and through coöperation with local officials and in other ways, made a very distinctive contribution to the study and treatment of the problems of small communities.

At the annual meeting of the American Country Life Association, held at New Orleans in November, a report on problems of rural government was presented by the committee on rural government and legislation. This considered the functions of rural government, rural areas, rural organization and rural citizenship.

The Philadelphia Forum has been established through the coöperative action of the University Extension Society, the Civic Club, the Academy of Music Corporation, and the City Clubs. The object of the institution is to provide opportunity for nonpartisan, nonsectarian discussion of public topics—national, state, and local, and for other events of civic and cultural interest. The program of the first season provides for seventy-five events, beginning October 1, 1921, and continuing for six months, to be held in the Academy of Music. A fee of $10 is charged for the series. The Forum is under the control of a board of governors representative of the organizations which participated in its establishment.

The National Institute of Public Administration has been organized as successor to the Training School for Public Service formerly conducted in connection with the New York Bureau of Municipal Research. It takes over the training work of the school and the consulting and research activities of the bureau, which has passed out of existence. The offices of the bureau are at 261 Broadway.

The Institute for Public Service in New York City has extended its educational activities by affiliating with the National School Digest, and now maintains a permanent exhibit of educational material at its new offices, 115th Street and Amsterdam Avenue.

The thirteenth National Conference on City Planning was held in Pittsburgh, May, 1921.

A notable survey of the administration of criminal justice in Cleveland has recently been completed. The survey was conducted under the auspices of the Cleveland Foundation, and was directed by Dean Roscoe Pound and Professor Felix Frankfurter of the Harvard Law School. Associated with these two were Mr. Reginald Heber Smith and Mr. Herbert B. Ehrmann of the Boston bar, Mr. Alfred Bettman of the Cincinnati bar, Mr. Albert M. Kales of the Chicago bar, Mr. Herman A. Adler, state criminologist of Illinois, Mr. Burdette G. Lewis, state commissioner of institutions in New Jersey, Mr. Raymond B. Fosdick, well-known expert on police administration, Mr. M. K. Wisehart, a New York journalist, and the staff of the Cleveland Foundation. The study covers police administration, the criminal courts,

the prosecutor's office, correctional and penal treatment, medical science and criminal justice, newspapers and criminal justice, and legal education in Cleveland. The various sections of the study have been issued in separate volumes, but they are soon to be brought together in a single volume. The findings and recommendations of the survey are too voluminous to be reviewed in a brief note. The indictment of the archaic system of administering criminal justice in the large American city is unanswerable and the recommendations represent the matured judgment of the best authorities available. It is also noteworthy that a federation of social and civic agencies has been formed to follow up the survey, and to work toward the realization of its recommendations.

The Detroit bureau of governmental research has issued a mimeographed report on the operation of the new unified criminal court which was instituted in Detroit in April, 1920. The report shows that the new system has had a notable result in increaing the promptness with which cases are handled and in increasing the certainty of punishment; other improvements have been effected in dealing with special classes of offenders and in checking the practices of professional bondsmen. The Detroit bureau has also issued a pamphlet describing the organization and work of that bureau and discussing the functions of research organizations generally. During the 1921 session of the state legislature, the bureau issued a weekly bulletin reporting the activities of the legislature, including general measures and, in particular, measures affecting Detroit and Wayne county.

The Toledo Commission of Publicity and Efficiency has issued a report of a crime survey of Toledo (January 29, 1921), a survey of the work of the commission for the first five years of its existence (February 12, 1921), and a report on the Toledo municipal court covering the first three years of the existence of that court (February 26, 1921).

The Chicago City Club has been publishing in its weekly bulletin a series of articles describing other city clubs.

The Cleveland Year Book, 1921 (Mildred Chadsey, editor), issued by the Cleveland Foundation in the summer of 1921, gives a valuable comprehensive survey of the activities and problems of that city, each chapter being contributed by one or more specialists. The report is thorough and is both informative and critical.

The *Goldsboro Bulletin* is a new monthly issued by the city of Goldsboro, N. C. It is mailed free to residents of the city.

Miscellaneous Items. In April of last year, the United States Supreme Court handed down two decisions sustaining the constitutionality of the New York rent laws of 1920 and of the rent law of 1919 (the Ball act) for the District of Columbia; both of these acts established substantial limitations upon the rights of landlords to fix rents or eject tenants.[1] The court divided five to four in each of the two cases, Justice Holmes writing the majority opinion in each case. Justice Holmes held that circumstances had clothed the renting of dwellings with a public interest so great as to justify regulation by law; that our legislative bodies can not be deemed incompetent to meet the emergency in the way it has been met by most of the civilized countries of the world; that no impairment of the obligation of contract could be charged against the New York laws since contracts are made subject to the exercise of powers of the state when otherwise justified.

In February, 1921, the board of aldermen of New York City availed itself of a power conferred by one of the New York laws of 1920, by passing an ordinance exempting from local taxation for a period of ten years new buildings constructed exclusively for dwelling purposes. The ordinance grants exemption to the extent of $1000 for each living room, the total exemption not to exceed $5000 for each single house or separate apartment. The enactment of this ordinance was followed by a notable increase in the number of building permits for dwellings.

The city council of Baltimore has passed an ordinance authorizing tenants against whom ejectment proceedings have been brought to appeal to the city courts, and providing that if in the judgment of the justices of the court "such ejectment would be unfair and would work a hardship on the tenant and is solely for the purpose of profiteering or speculation, the said justices may refuse to grant a warrant of ejectment for a tenant holding over for a further period of not more than thirty days."

The legislature of Pennsylvania has passed a law authorizing the two second-class cities (Pittsburgh and Scranton) to adopt a system of separate assessments on land and improvements, respectively, so as to place the heavier burden of taxation on land.

The municipal rent commission of Denver has been successful in securing many reductions in rentals, generally by argument and persuasion rather than by invoking the restraining powers conferred upon it by law.

[1] These acts are described in the *American Political Science Review*, November, 1920, pp. 697–700.

A slight beginning was made by the Ohio legislature in 1921, in dealing with the notoriously bad financial situation of most Ohio cities, a situation due in part to the state law limiting the tax rate. One act of 1921 accords temporary relief by allowing taxing districts by popular vote to place their interest and sinking fund levies outside of the tax limitation; another act allows the districts, with a popular vote of 60 per cent of those voting, to suspend the tax limitation for a period of three years. A more important law is one designed to put an end to some of the short-sighted policies which some cities were adopting to meet current deficiencies in operating revenues; the cities would refund debts as they matured or would issue bonds to raise money for current expenses. To end these practices a law, sponsored by the Ohio Institute of Public Efficiency, was passed, which prohibits borrowing for current expenses or deficiencies, limits the duration of loans to the probable life of the assets acquired, lowers the limits of maximum indebtedness, and establishes the serial form of bonds.

The Minnesota legislature of 1921 passed a law authorizing any city or village in the state to levy a wheelage tax, with the provisos that the tax shall not exceed 20 per cent of the state motor vehicle tax and that no tax shall be levied on vehicles used for selling farm or garden products, where the owner or cultivator of the farm or garden is the owner of the vehicle.

The city council of Philadelphia has at last committed itself to the policy of city-wide municipal street cleaning beginning January 1, 1922, replacing the private-contract system for that work.

The social unit experiment in Cincinnati has finally been abandoned for lack of funds. It had been handicapped in part by the opposition from the mayor and his political associates.

The city councils of both Toledo and Columbus, O., have taken definite steps toward the establishment of civic centers for the grouping of their municipal buildings.

The New York legislature in 1921 passed a law providing for voting machines in New York City and cities of the second class.

The city of Jamestown, N. Y., has, with the approval of the voters, established a municipal milk plant for bottling, pasteurizing, and distributing milk.

Special Legislation for New York Cities, 1914–1921. The New York constitution of 1894 has a peculiar provision on the subject of special legislation for cities. The provision is as follows:[1]

"All cities are classified according to the latest state enumeration, as from time to time made, as follows: the first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs of government of cities and several departments thereof, are divided into general and special laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of each city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words 'accepted by the city', or 'cities' as the case may be; in every such law which is passed without

[1] Art. XII, sec. 2, pp. 201–3 of clerk's manual.

acceptance, by the words 'passed without the acceptance of the city' or 'cities', as the case may be."[2]

In order to discover what the effect of this suspensory veto power of the cities actually is, the following analysis has been made as to the fate of the special city bills, introduced in the state legislature from 1914 to 1921 inclusive:

	1914	1915	1916	1917	1918	1919	1920	1921	TOTAL
Bills passed both houses....	181	188	206	220	192	175	237	240	1639
Bills recalled from mayor (dead).....	—	3	—	1	—	—	—	—	4
Bills accepted by the city....	147	152	164	185	146	132	193	177	1296
Bills not accepted by the city	34	33	42	34	46	43	44	63	339
Bills passed by legislature over city's disapproval....	1	3	1	2	1	2	2	5	17
Bills passed by governor after city's disapproval; held not a city bill.....	—	—	1	2	3	—	—	1	7
Bills lost—"pocket vetoed" by city.....	33	26	38	25	38	36	42	54	292
Bills lost—"tabled" by legislature after disapproval of city.....	—	4	2	5	4	5	—	3	23
Governor's veto after protest of city and repassing by legislature (city bills)..	—	1	—	—	—	—	2	—	3
Bills enacted into law.....	133	144	163	172	135	119	187	161	1214
Governor's approval after protest of city (city bills)	1	2	1	2	1	2	—	5	14
Governor's veto after approval of city (city bills).....	15	10	3	17	14	15	6	22	102
Recalled from governor after acceptance by city (dead).	—	—	—	—	1	—	—	—	1

During the eight year period, 24 bills, or an average of 3 bills per session, were passed by the legislature over the city's protest. Of these, 21 bills, or an average of $2\frac{5}{8}$ bills per session, were enacted into law. Deducting the 7 so-called noncity bills, 14, or an average of $1\frac{3}{4}$ bills per session, were enacted into law.

During the same period, 318 bills, or an average of $39\frac{3}{4}$ bills per session, were not enacted into law, after the city's protest. Thus $22\frac{5}{7}$ times as many bills were not enacted into law after the protest of the city as were enacted.

[2] Amended by vote of people, Nov. 5, 1907.

Of a total of 339 bills not accepted by the city, 24 bills, or 7.08 per cent, were passed by the legislature over the city's protest. Of a total of 339 bills not accepted by the city, 21, or 6.2 per cent, were enacted into law. Deducting the 7 so-called noncity bills, 14 bills of a total of 332 city bills not accepted by the city, or 4.2 per cent, were enacted into law.

Therefore, the constitutional provision was from 92.92 per cent to 95.8 per cent effective in preventing hostile special legislation.

Of a total of 339 bills not accepted by the city, 7, or 2.07 per cent, were approved by the governor, after he had held that the bill was not a city bill. Of a total of 339 bills not accepted by the city, 17, or 5.01 per cent, were repassed by the legislature. Of a total of 339 bills not accepted by the city, 23, or 6.78 per cent, were tabled, an average of $2\frac{7}{8}$ bills per session. Of a total of 339 bills not accepted by the city, 292, or 86.13 per cent, were pocket vetoed by the city; an average of $36\frac{1}{2}$ bills per session.

Therefore, 12.7 times as many bills were pocket vetoed as were tabled.

Of a total of 1635 bills which the city considered, 339, or 20.73 per cent were not accepted by the city.

In discussing the effect of the suspensive veto of the city in the nineteen years following the adoption of the New York constitution of 1894, Professor Howard L. McBain finds that only 147 special acts relating to cities were passed over the heads of the cities affected.[3] According to the above investigation, there were 17 bills passed by the legislature over the disapproval of the city. However, 3 of these bills were vetoed by the governor, leaving 14 enacted into law. There were also 7 bills disapproved by the city, which the governor held were not city bills, and subsequently approved, causing them to become laws. This makes a total of 21 bills enacted into law, during the eight year period, without the consent of the city. Thus, since the adoption of this constitutional provision of 1894, there have been 171 bills—including the 7 so-called noncity bills, and the 3 bills subsequently vetoed by the governor, passed over the heads of the cities affected, or an average of $6\frac{1}{3}$ bills per session. This compares with the average of $7\frac{1}{2}$ bills per session for the first nineteen years.[4] The decreased average per session is quite pronounced in the last eight years, only 3 bills per session having been passed over the city's protest. Deducting the 3 bills vetoed by the governor, after having been repassed by the legisla-

[3] McBain, *The Law and the Practice of Municipal Home Rule*, p. 103.
[4] *Ibid.*

ture over the city's disapproval, the average shrinks to $2\frac{5}{8}$ bills per session. Deducting the 7 so-called noncity bills, the average dwindles to $1\frac{3}{4}$ bills per session. This would seem to bear out Professor McBain's observation that there has been a noticeable diminution in the number of bills thus enacted.[5]

Comparing the number of city bills enacted into law despite the city's protest, 14 (that is, deducting the 3 bills vetoed from the 17 passed by the legislature over the city's protest), with the number lost after the disapproval of the city, 318 (that is, adding the 292 bills pocket vetoed, the 23 bills tabled, and the 3 bills vetoed by the governor), $22\frac{5}{7}$ times as many bills were not enacted into law after the protest of the city as were.

Comparing the total number of bills passed over the city's protest, 24, with the total number of bills not accepted by the city, 339, gives a percentage of only 7.08. Deducting the 3 bills vetoed by the governor, the percentage decreases to 6.2. Then eliminating the 7 so-called noncity bills, the percentage decreases to 4.2. Thus the suspensory veto power has been from 92.92 per cent to 95.8 per cent effective in preventing the evils of special legislation. It is evident, then, that the power is almost absolute.

It is significant, however, to note the fact that of the 318 bills not accepted by the city and subsequently lost, 3 were vetoed by the governor, 23 suffered the fate of being tabled, while 292 were pocket vetoed. In the case of the bills pocket vetoed, the legislature sent the bills to the city less than 15 days before the end of the session. As the city has 15 days for a public hearing upon the bill, its disapproval at the end of the 15 day limit could not be overruled by the legislature, since the legislature was then out of session. The 23 bills tabled were those which were returned disapproved by the city before the close of the session, and upon which the legislature either took no further action or which they definitely tabled. In other words, adding the 17 bills disapproved by the city which were subsequently repassed by the legislature and the 23 bills tabled, there were only 40 bills of the 339 disapproved by the city which the legislature had an opportunity to repass. The margin between 23 and 17, or between those which the legislature allowed to die and those it repassed, is certainly not a large one. Expressing the problem in percentages, we find that 5.01 per cent of the bills not accepted by the city were repassed by the legislature, while 6.78 per cent were tabled—a difference of only 1.77 per cent. On the other hand, 86.13 per cent of the bills not accepted by the city were

[5] H. L. McBain, *The Law and the Practice of Municipal Home Rule*, p. 103.

pocket vetoed—or a difference of 79.35 per cent between those pocket vetoed and those tabled. In other words, 12.7 times as many bills were pocket vetoed as were tabled.

The tendency in the legislative branches of our governments, in other states as well as in New York, to delay, for various reasons, the passage of many measures until near the close of the session, is notorious.[6] Also, the relatively longer procedure necessary in passing special city legislation after passage by both houses, transmission to the mayor, with a fifteen day period after his receipt of the bill, for a public hearing, and then the return to the legislature in case of disapproval, intensifies this difficulty of passing special city bills. The real effectiveness of the suspensory veto, therefore, has been due not so much to the hesitancy of the legislature to override the will of the city as it has been to conditions within the legislature, apart from its attitude towards city affairs.

Although Professor McBain points out that judicial controversy as to whether a bill is a city bill has been averted by the liberal practice of the legislature in submitting doubtful bills to the city or cities concerned, yet the governor may approve the bill, after holding that it is not a city bill. This power of the governor to override on his own accord the disapproval of the city is of course necessarily limited to those doubtful cases which, unfortunately, the constitution allows to arise by its vague definition of city laws as "laws relating to the property, affairs, or to the government of cities."[7] That this is not important relatively is shown by the small number of bills which have met this fate, only 7 out of a possible 339, or 2.07 per cent.

While it is obvious that the various cities have had a decided negative influence over their affairs, yet it is apparent that the suspensory veto is not the ideal solution for the difficult problem of the relationship of the state to the city. The division of the responsibility between the state and the city is especially noticeable in "claim bills," which in many cases would probably not be passed if either the state legislature or the mayor had to accept full responsibility.

There is also a possibility that the officials of the city are not truly representative on all bills involved. This is especially possible in the mayor-council plan, since in this plan the mayor's responsibility to the city is interrupted and discontinuous. This possibility, Professor McBain illustrates through the experience of the city of Buffalo in its

[6] Holcombe, *State Government in the United States*. New York City, 1916.
[7] Art. XII, sec. 2.

attempt to establish the commission form of government, despite the opposition of the mayor.[8]

Again, the evils of hostile special legislation have not been automatically removed. A considerable number of bills were passed by the legislature which the cities concerned considered as inimical to their interests. Out of a total of 1635 bills sent to the cities for their consideration (deducting the 4 bills recalled from the mayor from the 1639 bills passed by both houses) 339 were not accepted. In other words, 20.73 per cent, or over one-fifth of all bills which the cities considered, they deemed to be against their interests.

Summing up the results of the investigation: first, the suspensory veto power of the cities of New York has been almost completely effective in preventing hostile special legislation; second, the effectiveness of the suspensory veto power has been due, not to the hesitancy of the legislature to override the will of the city, but to conditions within the legislature, apart from its attitude on city affairs; and third, the suspensory veto power, although effective in a negative way, is not the ideal solution of the problem of the relationship of the state to the city, as there is the possibility of division of responsibility between state and city, as well as the possibility that the officials of the city are not representative of the city on a particular measure; while the fact that one-fifth of all the bills sent to the cities were not accepted by them indicates that the cities are compelled to be constantly on their guard against hostile special legislation.

It is important to note the remarkable consistency of the items year after year. It is evident from a study of the table that these conclusions are based not on a chance or erroneous combination or averaging of figures, but on actual conditions which seem to have acquired a relatively permanent character. They are as true for any year of the investigation as for an average or total of the eight.

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[8] McBain, *The Law and the Practice of Municipal Home Rule*, pp. 104–5, n. 1. Also S15 of 1914—Not accepted by the city, repassed by the legislature and approved by the governor. Here the obvious public opinion in Buffalo had a large part in crystallizing legislative sentiment so as to cause the legislature to override the mayor's veto.

NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

Professor W. W. Willoughby, of the Johns Hopkins University, has been on leave of absence, assisting the Chinese government in the preparation of its case before the Washington Conference on Far Eastern affairs.

Professor Clyde L. King, of the University of Pennsylvania, was engaged during the summer of 1921 as research expert for the joint congressional commission of agricultural inquiry. The report of the commission deals chiefly with the causes of agricultural depression.

The University of Michigan and the University of the Philippines have completed arrangements for an exchange of professors of political science. Maximo M. Kalaw, head of the department of political science in the latter institution, will give courses at Michigan during the academic year 1922–23, while Professor Ralston Hayden will do similar work at the University of the Philippines. Professor Hayden will leave for Manila in May, 1922. He will be away about fifteen months and expects to make a first-hand study of colonial government, not only in the Philippines, but also in the Japanese, French, Dutch, and British possessions. Professor Hayden will shortly publish a collection of the new European constitutions.

Professor H. E. Bolton, of the University of California, will take charge of Professor W. R. Shepherd's courses in Columbia University during the second semester. Professor Shepherd is on leave during the present year.

Professor Howard L. McBain, of Columbia University, has been appointed by Governor Miller a member of the commission for the revision of the New York City charter.

Dr. Julius Goebel, Jr., has been appointed lecturer in international law at Columbia University. He has taken over the courses formerly conducted by Mr. Henry F. Munro, now of Dalhousie University.

Dr. H. E. Yntema has been appointed lecturer in Roman law and comparative jurisprudence at Columbia University.

Professor Raymond G. Gettell, of Amherst College, will give courses in American government and foreign relations in the coming summer session of the University of California.

Dr. Charles H. Maxson, of the University of Pennsylvania, has been carrying on an investigation on unicameral legislation in the British-American provinces of Canada.

At the University of California, Dr. N. Wing Mah gives a course during the second semester on the contemporary politics and foreign relations of the Chinese republic. Next year Professor W. Popper will give a course on governments in the Near East, and Professor H. I. Priestley one on Hispanic-American institutions.

At an institute of efficiency in government, held at Chicago December 1–3 in conjunction with the first annual convention of the Illinois League of Women Voters, the laxness of men in voting was discussed by Professor Charles E. Merriam, of the University of Chicago; nominating processes, by Professor P. Orman Ray, of Northwestern University; and ballot forms and defects by Professors Ralston Hayden, of the University of Michigan, and A. R. Hatton, of Western Reserve University.

There has been established at Norwich University, within the department of political science, a bureau of municipal affairs which will hold itself ready to give assistance to the counties, cities, towns and villages of Vermont in the solution of problems peculiar to municipal corporations. The bureau will render this service in the following ways: (1) by giving information regarding community organization, town planning, and the administration of local government; (2) by publishing bulletins dealing with problems of government which are of current interest and distributing them to municipal officers, civic organizations, and libraries; (3) by encouraging the establishment of local town

reference bureaus; (4) by providing communities with speakers on governmental topics; (5) by holding local government conferences. The establishment of this bureau is a continuation of the work already done in this field by Norwich through the publication of the bulletins on poor relief and town planning. K. R. B. Flint, professor of political science, will be director of the bureau.

The National Convocation of Universities and Colleges on International Relations, including representatives of more than two hundred universities and colleges, met at Chicago, November 12, 13, and 14, 1921, to consider the problem of the limitation of armaments. As a result of this convocation, a permanent organization was formed, to be known as the National Student Committee for the Limitation of Armaments. Its purpose is to stimulate among college students an interest in the issues confronting the nations interested in the limitation of armaments; and to mobilize and make articulate student sentiment relative thereto. The movement had its inception at the Intercollegiate Conference on Reduction of Armaments called together at Princeton University on October 26. At this conference, delegates from thirty-nine colleges enthusiastically supported the project of reduction of armaments and advocated making a nation-wide appeal to college students. Among the resolutions adopted at the Chicago meeting is one of especial interest to teachers of political science. It was resolved that the "Convocation, aroused by the consideration of the great problems now under discussion at Washington, calls the attention of college and university officers and students to the necessity of providing more fully than do present courses of instruction in American educational institutions for an intelligent understanding of the problems of national and international life. To the end that present defects in these matters be corrected, it is urged that courses of instruction be provided which shall acquaint students in schools and colleges with the fundamental necessity of social coöperation and the disastrous consequences of the lack of international harmony and war."

Annual Meeting. The seventeenth annual meeting of the American Political Science Association was held at Pittsburgh, December 27–30, 1921. Eighty-six members registered, and the actual attendance may be estimated at somewhat more than one hundred. A number of members who would otherwise have been present were detained at Washington by duties connected with the Conference on the Limitation of Armaments. The American Economic Association, the American Sociological Society, the American Statistical Association, the American Association of Labor Legislation, the American Association of University Professors, and one or two smaller organizations were in session at Pittsburgh during the same week. Joint sessions were held with the Sociological Society and the Economic Association; and a smoker and buffet supper was tendered the members of all associations by the University of Pittsburgh and the Carnegie Institute of Technology. Arrangements for the meeting were very good; practically all persons on the program appeared; and it was generally felt that the meeting was one of the best in the history of the association.

The meeting opened on December 27 with a luncheon conference at which Professor W. B. Munro, of Harvard University, presented a report from the enlarged committee on instruction in political science created at the annual meeting of 1920. The report appears in full in the present issue of the *Review*. The report was discussed at some length by Professor Edgar Dawson of Hunter College, Professor Clyde L. King of the University of Pennsylvania, Professor B. F. Shambaugh of the University of Iowa, Dr. J. Lynn Barnard of the Pennsylvania Department of Public Instruction and others. As noted below, the association took steps to secure further consideration of the subject in coöperation with other organizations interested.

Two sessions were devoted to problems of state government. At the first, the principal address was given by Professor Charles E. Merriam, of the University of Chicago, on "Nominations and Primary Elections." At the second session on this general field, Professor John M. Mathews, of the University of Illinois, discussed the general principles which ought to be observed in reorganizing state administrative systems. This subject was discussed by several persons, including Professors Frank E. Horack of the University of Iowa, Frances W. Coker of Ohio State University, Arthur N. Holcombe of Harvard University, and John A. Fairlie of the University of Illinois.

At a joint session of the Political Science Association and the Sociological Society, Dr. Leo S. Rowe, president of the Political Science Association, spoke on "The Development of Democracy on the American Continent." Professor Edward C. Hayes, president of the Sociological Society, had as his subject "The Sociological Point of View."

At a luncheon conference on problems of college teaching of political science, Professor Raymond G. Gettell, of Amherst College, discussed the teaching of political science in colleges and explained methods in use in his institution; Professor Arnold B. Hall, of the University of Wisconsin, presented the results of a questionnaire on the teaching of constitutional law and discussed the policies and methods that should obtain in this branch of instruction; Professor J. S. Reeves, of the University of Michigan, described his method of teaching international law; and Mr. Frederick P. Gruenberg, director of the Philadelphia Bureau of Municipal Research, related the experiences of his institution with field work in the teaching of municipal government. His testimony was that field work for undergraduates has commonly been a failure, but that, on the other hand, it has usually been carried on very successfully and profitably by competent graduate students.

A session was given to the subject of centralization versus decentralization in the relation of the national government to the states. The principal address was delivered by Professor S. Gale Lowrie, of the University of Cincinnati, and the discussion was participated in by Professor James T. Young of the University of Pennsylvania, Professor Nathan Isaacs of the Pittsburgh Law School, Professor B. A. Arneson of Ohio Wesleyan University, Professor E. W. Crecraft of the Municipal University of Akron, and others.

At a session devoted to the general subject of the organization of political research, Professor W. W. McLaren, of Williams College, presented the tentative plans for the second session of the Institute of Politics, to be held during the summer of 1922, and Professor Charles E. Merriam, of the University of Chicago, described the need of improved facilities for research in political science and discussed various phases of the problem. As will be pointed out, a new committee on this subject, under the chairmanship of Professor Merriam, was created.

At a session on the general subject of foreign and comparative government, papers were presented as follows: "Ministerial Responsibility vs. the Separation of Powers," by Professor Charles G. Haines, of the University of Texas; "The Classification of Political Parties and the Relative Advantages of Two-Party and Multiple Party Systems,"

by Professor Robert C. Brooks, of Swarthmore College; "The Constitutions of Czechoslovakia, Poland, and Jugoslavia: a Comparative Study," by Professor Ralston Hayden, of the University of Michigan; and "The Political and Economic Relations of Ruthenia to Czechoslovakia," by Mr. Gregory I. Zatkovich of Pittsburgh. A paper by Dr. Frederick A. Cleveland, of Boston University, on "Readjustment of the Relations between the Executive and Legislative Branches of Government" was, in the absence of Dr. Cleveland, read by title.

The last evening session was devoted to a consideration of the conditions on which the United States should enter a world organization for the maintainance of peace. The principal address was by Professor Edwin D. Dickinson, of the University of Michigan, and the discussion was participated in by Professor Quincy Wright, of the University of Minnesota, Professor A. B. Hart, of Harvard, and others.

At a final joint session with the Economic Association and the Sociological Society, the Political Science Association was represented by Professor Robert E. Cushman of the University of Minnesota, whose paper was entitled "The Social and Economic Interpretation of the Fourteenth Amendment."

At the business session held on the afternoon of December 28, the secretary-treasurer submitted a report on the membership and finances of the association for the fiscal year ending December 15, 1921. In brief summary, this report was as follows:

1. Membership

Members gained during the year	173
Resignations and cancellations	132
Net gain	41
Total members paying annual dues	1,304
Life members	57
Total membership	1,361

2. Finances

(a) Receipts:		
Balance on hand December 15, 1920	$98.27	
Back dues collected	446.00	
Dues for 1921 collected	4,165.94	
Dues for 1922 collected	577.00	
Voluntary contributions by members	290.00	
Sale of publications	179.61	
Miscellaneous	31.92	
Total balance and receipts		$5,788.74

(b) Expenditures:		
Bills paid for 1920	$1,303.35	
Williams & Wilkins Company (printing and distributing the *Review*)	3,168.32	
Clerical and stenographic assistance in the office of the secretary-treasurer	312.60	
Clerical and stenographic assistance in the office of the managing editor (including postage)	642.10	
Postage	122.00	
Stationery and printing	153.25	
Miscellaneous	44.44	
Total expenditures		$5,746.06
Balance December 15, 1921		$42.68
(c) Bills remaining unpaid Dec. 15, 1921	$620.83 (estimated)	
(d) Trust Fund:		
Balance December 15, 1920 (Certificate of deposit at 4 per cent in First National Bank, Madison, Wisconsin, due February 5, 1922)		$979.18
Receipts from life memberships		25.00
Total		$1,004.18

The treasurer's books were audited by a committee consisting of Professor R. T. Crane, of the University of Michigan, and Professor C. G. Haines, of the University of Texas. The committee reported the accounts correct.

It was voted that the members of the association should be asked again in 1922, as in 1921, to make a voluntary contribution of one dollar for the support of the REVIEW, in addition to the regular annual dues of four dollars.

In view of the improved financial condition of the association and of a recent reduction in the cost of publishing the REVIEW, it was voted that the board of editors should, at its discretion, increase the size of each issue to an average of 180 pages.

In pursuance of the report of the committee on instruction, it was voted that the Political Science Association should invite the American Historical Association, the American Economic Association, the American Sociological Society, and the National Educational Association to appoint two representatives each, to confer on the teaching of social studies in high schools, and that representatives of the Political Science Association be instructed to promote coöperation with any other organizations interested in the study of the social sciences in schools, in so far as may be feasible. The committee on instruction,

under the chairmanship of Professor W. B. Munro, was continued; and representatives of the Political Science Association for the purposes just mentioned were appointed as follows: Professor Walter J. Shepard, of Ohio State University, and Professor R. G. Gettell, of Amherst College.

A report of the committee created in 1920 to consider the establishment of a center for research in political science at Washington was presented by two members of the committee, Professor A. N. Holcombe, chairman, and Dr. L. S. Rowe. The report showed that a University Center for Research has been established in Washington, under a board of research advisors, organized in a committee of management and in technical divisions of which the following are now established: Division of History; Division of Political Science; Division of International Law and Diplomacy; Division of Economics; and Division of Statistics. The report in full will be printed in the May issue of the REVIEW. It was duly received by the association and the committee was discharged.

A committee on political research was appointed, as follows: C. E. Merriam, chairman, R. T. Crane, John A. Fairlie, and Clyde L. King.

Officers of the association for 1922 were elected as follows: president, William A. Dunning, Columbia University; first vice-president, O. D. Skelton, Queen's University, Ontario; second vice-president, J. S. Reeves, University of Michigan; third vice-president, J. T. Young, University of Pennsylvania; secretary-treasurer, Frederic A. Ogg, University of Wisconsin; member of the executive council for the term ending December, 1923, in succession to Charles McCarthy (deceased), J. M. Mathews, University of Illinois; members of the executive council for the term ending December, 1924, E. C. Branson, University of North Carolina; R. S. Childs, New York City; F. P. Gruenberg, Philadelphia; C. C. Maxey, Western Reserve University; and V. J. West, Leland Stanford University.

Professor John A. Fairlie was reëlected managing editor of the REVIEW, and on his motion all present members of the board of editors were reëlected.

The place of meeting in 1922 was left to decision of the executive council.

THE STUDY OF CIVICS

The American Political Science Association, at its meeting in December, 1920, authorized the appointment of a committee to define the scope and purposes of a high school course in Civics, and to prepare an outline of topics which might properly be included within such a course. In compliance with this action the Committee submits the following suggestions and outline:

SUGGESTIONS FOR A COURSE IN CIVICS IN HIGH SCHOOLS[1]

The American Political Science Association believes that there is urgent need for an authoritative definition of the term *Civics*. Originally this term, as applied to high school instruction, was understood to include a study of American government and closely-related matters; but its scope has been so greatly broadened in recent years that it is now regarded in many quarters as including the whole range of the social sciences, economics, sociology, ethics and international relations, with the basic subject of American government thrust far into the background. The result is that high school instruction in the subject, by spreading itself in unguided fashion over so broad an area, has tended to become superficial and ill-organized. Too often it affords the pupil a mere smattering of many things, not articulated to each other or bound together by any central concept, and none of which are presented with sufficient thoroughness to make any lasting impression upon him. It is not the breadth of the range alone but the lack of coördination that impairs the educational value of the subject. The Association believes that this disintregation has been carried too far and that the time has come not only to establish the "outside boundaries" of Civics but to urge a more effective coördination of the topics included within these limits.

At the same time the American Political Science Association expresses its readiness to coöperate cordially with other groups which may be primarily interested in the high-school study of economics, sociology and history, or in the task of providing courses designed to

[1] These suggestions have reference to instruction in the third and fourth year of the regular high school course, and not to such instruction as is often given in earlier years under the name of community civics or elementary civics.

cover in an introductory way the field of the social sciences. We believe, nevertheless, that the outline herewith presented includes the minimum essentials in political science.

This does not mean, however, that the scope of a school course in Civics should be strictly confined to the framework and functions of government. The aim of the course should not be to impart information but rather to give the pupil an intelligent conception of the great society in which he is a member, his relation to it, what it requires of him, how it is organized, and what functions it performs. From his study of Civics the pupil ought, accordingly, to learn something about the chief social and economic organizations and relations. Yet it should not be forgotten that in the field of social studies all roads lead through government. No matter whether the topic under discussion be finance, banking, public health, poor relief, transportation, or labor problems, we must at all times reckon with governmental organization, policy and action as great factors in the situation. The study of governmental organization and the functions of public authority ought therefore to be the center or core of any high school course whose chief aim is to inculcate sound ideals of citizenship, to emphasize the duties of the citizen, and to afford any grasp of public problems.

It is only in this way that a course in Civics can be given the substance and definiteness which it must acquire if it is to hold a secure place among the advanced subjects of the high school curriculum. A single study which merely brings together a mass of loosely-organized topics drawn from the whole domain of government, economics, sociology and ethics can scarcely hope to have any high educational value. The topics, whatever they are, should be related to some central concept. A wisely-planned course in Civics can be made definite, homogeneous and thorough without being narrow or uninteresting.

The immediate problem is to impress upon the pupil the fact that he is a member of the community and ought to be an active, constructive member of it. The teaching of the subject ought to point continually towards civic duty as well as civic rights. Scope and methods should be adjusted to this purpose, which means that social and economic forces which directly affect the activities of citizenship ought to receive adequate emphasis.

It is not the function of a course in Civics to carry on any form of social, economic or political propaganda. Nevertheless the aim should be to develop an intelligent attitude towards questions of the day, hence no well-rounded study of civic activities can wholly avoid some

controverted issues. Intelligent instruction can achieve the main purpose without allowing the study to degenerate into propaganda of any sort.

Three present-day tendencies connected with the teaching of Civics call for a word of comment. The first is a disposition to dispense with the use of a text book, supplanting it by "socialized" recitations, "field work," and "visits to public institutions." However useful these things may be, they do not render a text book superfluous, as has been pointed out by the committee on social studies of the National Education Association (Bureau of Education, Bulletin No. 28, 1916, p. 62). A text book is a positive and practically an indispensable aid to effective teaching no matter from what standpoint the subject of Civics is approached. "There may be exceptionally equipped and talented teachers who can do better without a text book than they would do if they followed explicitly any existing text. Even such teachers will be more successful if their pupils have in their hands a well-planned text; and the great majority of teachers are not prepared to organize courses of their own. The teacher who is not able to use a fairly good text and to adapt it to the needs of his pupils to their great advantage can hardly be expected to be capable of devising a course independently of a text that would in any sense compensate for the loss of the recognized value of the best texts available.

The second tendency is to give preference to text books which have been prepared by a local author and which lay special emphasis upon political, social and economic conditions in the immediate neighborhood. This emphasis is no doubt useful in providing an approach to more remote problems, but there is always a danger that in the zeal of acquainting the pupil with the conditions of his own state or community, the larger life of the nation and the problems of nation-wide scope may receive inadequate attention.

A third feature of high school work in Civics at the present time is the disposition of some school authorities to replace the systematic study of Civics by a course on "Problems of Democracy," or "Social Problems," or something of this kind. This action is based upon the idea that thereby the pupils may be brought directly into touch with the "live problems of the present day" instead of spending time upon the development and organization of political, economic and social institutions. The committee recognizes the value which attaches to the so-termed "problem method" in teaching; but it believes that no effective instruction in the problems of democracy can be imparted

to high school pupils unless they are given an adequate background through the study of governmental organization and functions. To provide this background the course must be comprehensive and systematic, not a study of isolated problems.[2]

The appended outline indicates in a general way the *outside limits* within which, in the committee's judgment, the scope of a high school course in Civics ought to be kept if the instruction is to be made effective. The outline is, if anything, too broad. It is not intended to be a syllabus; it does not include *all the topics*, or *the only topics*, which come within the general field suggested.

The capable teacher can add, substitute, or omit as may be thought desirable. This outline is merely intended to indicate by its inclusions the sort of topics which, on a liberal interpretation of the subject, belong to the study of Civics and by its omissions the kind of material which, in the committee's judgment, does not belong there at all.

These topics are grouped under thirty-three headings. Some of them can be covered quickly; others will require more extended discussion. No attempt is made to apportion the amount of time that should be devoted to each, for this outline is not intended to be a plan of a course but rather a presentation of the topics out of which a course can readily be constructed. The individual teacher can decide, in the light of the time at his disposal, what may best be included and what omitted.

OUTLINE

Part 1—The American Environment

I. Man and Society

Why men organize. The social instinct. The doctrine of evolution as applied to society. Heredity and environment. Individual and social heredity. The physical and the social environment of man. The chief social groups (family, tribe, community, state, etc). Individual liberty and social control.

II. The United States

Geography as a factor in national life and progress. The chief geographical areas of the United States. The soil. Harbors and waterways. The newer territories. Alaska and the insular possessions. Influence of geographic features upon past development. Geography and the future.

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[2] The accompanying outline provides, in effect, a course in the problems of democracy with the essential background included. Where a general and systematic course in Civics is taught in the third year of the high school program it may very appropriately be followed in the fourth year by an intensive study of selected political, economic or social problems; but school programs do not usually permit this arrangement.

III. The People, Races and Racial Problems of the United States.

The growth of population. How the population is now distributed. The drift to the cities, its causes, extent and results. Principal occupations of the people. Immigration; its history and causes. Nature of the immigration. Present racial distribution. The negro problem. Other racial problems. Assimilation. The effects of immigration, social, economic and political.

IV. The American Home and Community

Importance of the family as a unit. Influence of the home in training for citizenship. Marriage as the basis of the family. The divorce problem. The community; what it is. How communities are formed. The needs and functions of the community. The community spirit. The community and the school. How the schools train for citizenship. The relation of good citizenship to community service.

V. Economic Factors and Organization

The economic needs of man. Economic motives. The subject-matter of economics. The consumption of wealth. Production. The factors in production. Land and natural resources. Rent. Labor. The division of labor. Is labor a commodity? Wages. How rates of wages are determined. Capital and interest on capital. The forms of economic organization. Partnerships and corporations. Profits. Government as a factor in production. The distribution of wealth. Transportation as a factor in distribution. Exchange, value and price. Competition and monopoly. Natural monopolies. Freedom of contract. The institution of private property.

Part II. American Government

(*a*) *The Foundations of Government*

VI. The Nature and Forms of Government

Definition of the state. Definition of government. The purpose of the state. Origin of the state. Various theories as to its origin. The basis of the state's authority. Classification of states. Relation of the state to government. The branches of government. The functions of government. Characteristics of American government. Written constitutions. Separation of powers. Federalism.

VII. The Citizen; His Rights and Duties

Who are citizens? How citizenship is acquired. Naturalization. The rights of the citizen. Are corporations citizens? Civil liberty; what it means and how it grew. Privileges which are not civic rights. The obligations of citizenship. Hindrances to good citizenship.

VIII. Popular Control of Government

The channels of popular control. Public opinion; its nature and limitations. The election of representatives. The appointment of officials. Election vs. Appointment. Appointments with and without confirmation. Partisan appointments. The spoils system. The rise of civil service. Nature of the civil service system. Its value and limitations.

Popular control through direct legislation and the recall. Origin and spread of the initiative and referendum. Direct legislation in practice. Merits and defects of direct legislation. The recall. The recall of judicial decisions.

(b) *The Electoral Mechanism*

IX. Suffrage and Elections

Citizenship and suffrage. Development of the suffrage. Woman suffrage. Present qualifications for voting. Educational tests. Taxpaying requirements. Disqualifications. How voters are registered. Nominations. History of nominating methods. The caucus, convention and primary. Merits and defects of the primary. Election methods. The ballot. The short ballot movement. The preferential ballot. Proportional representation. Corrupt practices at elections. Absent voting. Compulsory voting.

X. Party Organization and Machinery

Why political parties are formed. Nature and functions of political parties. History of American parties. What the leading parties stand for. Party platforms. The minor parties. Economic and social influences on party divisions. Party organization in nation, state and community. The machine. Rings and bosses. Party finance. Practical politics. How parties are financed. The reform of party organization.

(c) *Local and State Government*

XI. Counties and Rural Communities

Early types of local government. The county; its legal status, organization and officials. Duties of county officers. The reform of county government. City and county consolidation. The county manager plan. The New England town; its organization and the functions of its officials. The township. County districts. Incorporated communities. Problems of local government.

XII. City Government

Growth of cities. Relation of cities to the state. Municipal home rule. Different types of city charter. The mayor. The heads of city departments. Municipal officials and employees. Civil service in cities. The city council. Boards and commissions in cities. The reconstruction of city government. The commission plan. Its extension, nature, merits and defects. The city manager. Other recent changes in city government.

XIII. Municipal Problems of Today

City planning. Streets and public works. The protection of life and property. Parks and recreation. The city's share in public health and welfare problems. Congestion of population and its relief. New sources of revenue for cities. Other municipal problems.

XIV. State Government

The early state constitutions. How state constitutions are made. General powers residing in the states. The governor. Officials of state administration. The state legislature. Legislative procedure. The states as agents of the nation. Relations between the states. Full faith and credit. Extradition. Limitations upon the states. The reconstruction of state government.

(d) *National Government*

XV. The National Constitution

American government before and during the Revolution. The earlier attempts at union. The Confederation; its weakness. Preliminaries of the Con-

stitution. Personnel of the convention. The convention's work. The compromises. General character of the Constitution. Methods by which it was adopted. Growth of the Constitution by amendment, interpretation and usage.

XVI. Congress at Work

Organization of Congress. Merits and defects of the bicameral system. The Senate; its organization. Its special powers. Confirmation of appointments. Ratification of treaties. Impeachments. Its concurrent powers. Its influence. The House of Representatives. Method of election. Procedure. The Speaker. The committee system. Powers of the House. Relations between the Houses. The general powers of Congress. Congressional finance.

XVII. The President and His Cabinet

Nature of the presidential office. Method of nomination. The college of electors. Why great and striking men are not always chosen. The President's powers. Appointments. The veto power. Other prerogatives. Relation of the President to Congress. The President's relation to his party. The Cabinet and the administration.

XVIII. The Courts and the Law

Judicial organization in outline. The Supreme Court. The subordinate courts. Jurisdiction of the federal tribunals. State courts. The common law. Statutory law. Equity. The jury system. Constitutional limitations relating to the administration of justice. Due process of law. The unconstitutionality of laws. The law's delays. Reforms in judicial administration.

Part III. The Civic Activities

(*a*) *Economic*

XIX. Natural Resources, Conservation, and the Public Domain

The chief natural resources; their value and the danger of exhausting them. Conservation. The forest policy of the United States. National reservations. History of the public lands. Sales of land and the homestead system.

XX. The Agricultural Interests

Importance of agriculture. Chief types of agriculture in the United States. Agriculture and the law of diminishing returns. Exhaustion of the soil and its prevention. Relation of agriculture to transportation. The problem of agricultural credit. The federal farm loan banking system. Agriculture and the labor problem. The work of the department of agriculture. The state agricultural authorities. Experimental farms. The county life commission.

XXI. The Encouragement and Regulation of Commerce

Purposes of commerce. Local, interstate and foreign commerce. How commerce is regulated. The interstate commerce commission and its work. Railroads and the Sherman Act. The railroads in war time. The Transportation Act of 1920. The future of the railroads. Foreign commerce; its scope and value. Government aid to shipping. The shipping laws. The merchant marine; its history. The consular service. International commerce and international exchange. Foreign commerce and the tariff. The tariff policy of the United States.

XXII. Industry and Labor

Modern industrial organization. Corporations. Combinations in industry. The control of industrial combinations. The federal trade commission. The general relations of government to industry. Labor's part in the industrial order. History of labor organizations. The American Federation of Labor; its organization and program. Methods and policies of labor. Collective bargaining. The right to strike. The closed shop and the open shop. Conciliation and arbitration. Compulsory arbitration. Industrial accidents and employers' liability. Child labor laws. Minimum wage laws. The problem of unemployment.

XXIII. Currency, Banking and Credit

Money and its origin. The functions of money. The coinage of the United States. The double and single standard. Paper money. Legal tender. The functions of banks. National banking system. Federal reserve banks. Some practical operations of banking. The relation of credit to money. Credit and prices. Workings of the credit system.

XXIV. Public Utilities

Nature of public utilities. The need of public control. Franchises. Methods of public utility regulation. Public service commissions; their organization and powers. Public ownership; its merits and defects. American and foreign experience in public ownership. Public utility problems at the present day.

XXV. Public Finance

The cost of government. Taxation, its forms and incidence. Leading principles of taxation. Local taxes. State taxes. National taxes. Economic and social purposes of taxation. The division of the taxing power between national and state governments. Suggested reforms in taxation. Government expenditures. How appropriations are made. The new national budget system. Public debts. Methods of public borrowing. Debt limits. How public debts are repaid.

(*b*) *Social*

XXVI. Public Health

The chief problems of health protection. Quarantine. The prevention of epidemics. Vital statistics, their nature and use. Some instances of progress in preventive medicine. Public sanitation. Public water supplies. Milk inspection. The inspection of food and drugs. Housing regulations. The work of local health boards. State health organization. The U. S. Public Health Service.

XXVII. Poor Relief, Correction and Other Welfare Problems

The problem of poverty. Old and new methods of dealing with it. The causes of poverty. Its prevention. Social insurance. Crime and its causes. Crime prevention. Prisons and prison reform. The care of mental defectives. Social amelioration and reform.

XXVIII. Education

The public school system. State and local school authorities. State control of education. Educational work of the national government. School finance. The newer demands in education. Vocational education and vocational guidance. The Gary system. Wider use of the school plant. Americanization.

(c) International

XXIX. National Defense

Defense as a function of government. Militarism. The causes of war. The prevention of war. Preparedness. The regular army. The national guard. The national army during the World War. America's part in the war. Universal military service. The navy. The problem of disarmament.

XXX. Foreign Relations

The nature of international law. The control of foreign relations. The diplomatic service. Secret and open diplomacy. Treaties. Extradition. Outstanding features of American foreign policy. The Monroe Doctrine. American contributions to international law. The war and international relations.

XXXI. The United States as a World Power

Traditional foreign policy. Why isolation is no longer possible. Relations with other American states. Relations with Europe. American interests in the Far East. Interests acquired during the war. Pending questions of foreign policy. The loans to European powers. Mandates and special privileges. Other diplomatic problems.

XXXII. The League of Nations

The idea of a league of nations in history. Purposes of the Versailles covenant. Its chief provisions. America's objections to the League. The League as a scheme of government. The League at work. What it has accomplished. The position of the United States in the new world order.

XXXIII. World Problems and Democracy

Results of the war on political, social and economic organization. The growth of radicalism. The soviet system. Plans for socialist commonwealths. Direct action. The reconstruction of government by constitutional means. Can democracy solve the problems of today? American contributions to democracy in the past. The ideals of democracy. What America can contribute in the future.

The undersigned have given their general approval to the foregoing suggestions and outline in order that a tangible basis for further discussion and for improvements may be afforded. This general approval is not to be construed, however, as an unreserved endorsement, by any of the undersigned, of every item in either the suggestions or the outline.

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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Le Droit International Public Positif. By J. DE LOUTER. (London: Oxford University Press. 1920. 2 vols. Pp. 576 and 509. Published by the Carnegie Endowment for International Peace, Washington, D. C.)

In nearly half a million of words, Professor de Louter gives us a comprehensive treatise of the whole field of public international law. The further qualification of his subject by the addition of *positif* (positive) indicates the purpose of discarding all abstract theorizing to base his system of the law of nations upon the modern practice of independent states (I, p. 48). The plan is well conceived and admirably executed. The author shows that he has thought out each section, and although his regard for the authorities who have preceded him is always respectful, it is never slavish. The French in which this scholarly Dutchman has recast his treatise preserves a personal and piquant flavor which sustains the interest through every page.

Among so many qualities of perfection the most serious defect is Professor de Louter's failure consistently to adhere to the positive system which he has proclaimed, when he reaches the discussion of such questions as intervention, equality of states, and reprisals. In these matters state practice is conspicuously at variance with what many of the champions of the alleged rights of weaker states would like to think to be the law, but Professor de Louter elects to support the rights of small states *nonobstans* the hard facts of international practice. For instance the existence of a right of angary is controverted, although, as the author frankly admits, it is "recognized by Germany, France, Italy, and the United States" (II, p. 431).

Professor de Louter concludes his treatment of intervention by declaring: "The preceding discussion makes it clear that except in rare instances there does not exist a right of intervention and that it ought rather to be stigmatized as a brutal assault against the basic

principles of law. Only those who deny or reject those principles can defend the right of intervention" (I, p. 251).

This would be all very well if Professor de Louter had based his principles of international law upon his own abstract ideas of what the law should be, but he claims to construct his system upon the practice of states, and an examination of the incidents which have occurred will show beyond dispute that states as a matter of practice do intervene frequently and upon grounds clearly stated and consistently sustained—in other words these precedents constitute a basis for the law of intervention. It is in regard to this very law of intervention that the positive system of international law most clearly justifies itself.

Perhaps a certain Anglophobia of which we repeatedly find evidence in the chronicling and interpreting of events is to be explained by the same desire to attribute to the smaller states more extensive rights than they will be found in actual practice to enjoy.

Particularly to be regretted is the lack of an index such as would enhance the value of these two volumes as a work of reference and facilitate the collation of the many valuable comments and bibliographical notes with the opinions of other authorities.

Within the compass of a review necessarily so brief we can perhaps best illustrate the quality and scope of this extensive treatise by concluding with an excerpt somewhat freely translated from one of the introductory pages:

"From what we have said above it follows logically and necessarily that international law although it is engendered by the free will of the states, from its birth put a check upon them. Even though the greatest caution is required when we attempt to draw a comparison between the law governing private relations and that of public affairs, we are justified in saying that the integrity and juridical capacity of sovereign states does not exclude limitation upon their liberty of action, provided that these limitations result from their own free will. Thus for example the capacity to bind himself by contract which an individual possesses permits a considerable restriction of his liberty of action. It is to be remembered that the guiding principles of international law, whatsoever be their origin, bind the states which have once acknowledged their empire, and that they limit the action of such states in internal and external affairs. Whoever loses sight of this fundamental truth denies the juridical character—that is to say, the existence and possibility of international law. It is impossible to accept the doctrine that a sovereign state is restricted in its freedom of action only so long

as it desires so to continue, because this doctrine undermines the very foundation of international law. The only difference between international law and national law is in their origin; the obligatory character of the two is completely identical. The restriction upon the freedom of action of an individual state finds ample compensation in the expansion of the common activity, thanks to mutual aid and reciprocal assistance. That which a single state cannot achieve is made possible by the coöperation of several. In this manner they become the organs by which law transcends national boundaries and effects a universal jural order. In fact, it takes on more and more the aspect of a law which governs not merely the relations of peace, but which preserves and guarantees peace. This is the road which leads to universal peace and it is far more sure than the most seductive Utopias. The gradual development of a universal community of law makes every disturbance a common calamity which ought to be anticipated and arrested by the combined might of all." (I, p. 17).

ELLERY C. STOWELL.

New York City.

The Secret Treaties of Austria-Hungary, 1879–1914. Vol. II: Negotiations leading to the Treaties of the Triple Alliance; with documentary appendices. By ALFRED FRANCIS PRIBRAM and ARCHIBALD CARY COOLIDGE. (Cambridge: Harvard University Press. 1921. Pp. ix, 271.)

Time alone will tell whether the doctrine of the Balance of Power is really "forever discredited." In its more general sense of the desirability of coalitions to restrict and repress a state which threatens to become too great, it may reappear upon occasion. In the narrower sense of an equilibrium between two rival groups of states, the story of the Triple Alliance and the Triple Entente warns the world against it. Such a balance of power did not exist between 1871 and 1891, during which time Bismarck spun a web which, while he remained Chancellor, connected in closer or remoter relationships most of the governments of Europe except the defeated and isolated France. After his fall Germany let go the slender tie with Russia, and France, joining with the Czar's government, began the formation of the rival league. Thus came into being an equilibrium of forces which for nearly a quarter of a century was widely praised and acclaimed as a device securing prolonged and perhaps permanent peace. Actually the situation was never stable.

In harmony with the older idea of balance, support was gradually transferred from Germany, which was steadily growing in population, wealth, energy and ambition, until in the trial by battle the structure reared by Bismarck could be utterly destroyed. It may be that the Triple Alliance, originally purely defensive and designed to maintain peace, only deferred war, rendered it inevitable, and prepared conditions which made it far greater and more terrible. This is a reflection to be taken into account when any treaty of alliance is proposed, in appearance however salutary.

The present volume increases the mass of material in English which may one day make possible a final judgment on the whole process. It should be read with its predecessor (reviewed in this journal), which contained the texts of the treaties of the Triple Alliance and other important secret agreements of Austria-Hungary, together with a chapter introductory to the material in this volume. Now appears Professor Pribram's summary and discussion of the diplomatic negotiations which led up to the five treaties of the Triple Alliance (in 1882, 1887, 1891, 1902, and 1912). He has promised similar treatment of the remaining 23 groups of instruments presented, and later a more general work on the foreign policy of Austria-Hungary from 1879–1914. The American editor (whose part has been as excellently done as in Volume I) has appended some of the chief documents of the Dual Alliance of France and Russia, and the exchanges of notes between the French and Italian governments in 1900, 1902, and 1912.

Professor Pribram's discussions are based on diplomatic correspondence and conference notes found in the archives of Austria-Hungary and such appropriate memoirs and comments as have been published. He could not see the correspondence between the German and Italian governments. The materials are put together in a clear and direct narrative, with numerous careful notes and references. His attitude is detached and dispassionate, unless the question be raised whether his feeling against Italy is stronger than that country's statesmen earned by their somewhat tortuous course.

The successful diplomat must be a prophet and more. He must in some measure not only foresee the future, but also control it. In a static world his task would be easy, perhaps indeed unnecessary. Given the actual world, with governments independent, proud, inclined to make virtues out of selfishness and touchiness, and furthermore subject to many alterations of internal and external conditions, his life is anxious and uneasy, demanding forbearance, patience, shrewd-

ness, and accommodation. All this is amply illustrated in the negotiations of the Triple Alliance.

At the beginning Germany, confronting the enduring hostility of defeated France, and Austria, at odds with Russia after the Berlin settlement, had already come together in an alliance which neither was seriously to question in forty years. Italy, troubled within and without, joined them, always inclined to be friendly with Germany, but never fully loyal to Austria. This relationship was maintained by formal treaty for thirty-two years, but only by means of several periods of negotiation, involving usually some concessions made by the two empires to Italy. First in a protocol with Germany (1887) and later in the treaty itself (1891) Italy displayed aggressive thoughts toward France. But her interests and ambitions alike demanded good terms with England and at least a *modus vivendi* with France. In commercial and diplomatic negotiations between 1898 and 1902 Italy, without ceasing to be the ally of the Central Powers, became so far the friend of France as to promise neutrality not only in case France were attacked, but even under certain conditions in case France should be the aggressor. It was not positively known, but was strongly suspected by each side, that the written promises of Italy were in contradiction. No one was therefore much surprised when by remaining neutral in 1914 and joining in the war against her former allies in 1915, Italy brought the Triple Alliance to an end.

A. H. LYBYER.

University of Illinois.

The Foundations of Sovereignty. By HAROLD J. LASKI. (New York: Harcourt, Brace and Company. 1921. Pp. 317.)

This volume contains nine independent essays, all save the first reprinted from various reviews or, in the case of the second, from the Smith College *Studies.* Their titles are: The Foundations of Sovereignty; The Problem of Administrative Areas; The Responsibility of the State in England; The Personality of Associations; The Early History of the Corporation in England; The Theory of Popular Sovereignty; The Pluralistic State; The Basis of Vicarious Liability; The Political Ideas of James I. While distinct studies, they constitute a unity through the underlying point of view, the idea of a pluralistic state, with which Mr. Laski's name is so closely identified. Their collection in one volume is thoroughly justified.

Mr. Laski's two previous volumes on the *Problem of Sovereignty* and *Authority in the Modern State* were chiefly concerned with a criticism of

the doctrine of sovereignty which is the corner-stone of the accepted theory of the state. They were cogent and convincing demonstrations of the inadequacy of the current political philosophy. But they left the reader with the feeling that, while Mr. Laski had rather successfully demolished the theoretical foundations of the existing state-structure, he had not offered any very tangible or definite substitute. The present work also contains much of destructive criticism, but it is far more constructive than its predecessors. "These essays," the author says, "are part of a scaffolding from which there is, I hope, eventually to emerge a general reconstruction of the state." The detailed outlines of the new edifice are, to be sure, not even yet clearly envisaged, but the ground plan is at least fairly well determined. Instead of an all-absorptive sovereign state, the fictitious character of which is daily becoming more evident, and which of necessity employs other innumerable fictions to explain and justify the exercise of its alleged omnipotence, we can see emerging a social order based upon the reality of a diversified group life. Instead of the *sic volo! sic jubeo!* of an antiquated absolutism, we see law and government becoming the expression and harmonization of the complexity of actual social interests. Instead of the power of government being in fact vested, in travesty of our vaunted theory of popular sovereignty, in the hands of a small governing class and exercised in the interest of certain other controlling economic classes, we can perceive a new order taking shape in which functional organization will give truthful expression to the principles of democracy.

The consummate importance of the thesis which Mr. Laski maintains is beyond question. Its implications involve every phase of jurisprudence, administration, and politics. It offers a veritably new *Weltanschauung*. It proposes as radically different an interpretation of the state and all its penumbra as did Darwin's doctrine of natural selection for the facts of biological science, and its general acceptance is certain to have as far-reaching and important an influence. Whatever his prepossessions may be, the student of political science cannot ignore Mr. Laski. Buttressed and fortified at every point by a wealth of historical and legal knowledge that attests a scholarship both profound and critical, and illumined by a clarity of vision of the trend of social and economic forces that is almost prophetic, the argument demands either acceptance or refutation. The challenge cannot be avoided.

WALTER JAMES SHEPARD.

Ohio State University.

Principles and Problems of Government. By CHARLES GROVE HAINES and BERTHA MOSER HAINES. (New York: Harper and Brothers. Pp. xvi, 597.)

The authors of this volume have approached the study of government through a consideration of the important forces, principles and problems relating to the operation of government, rather than by a detailed description and analysis of the organization and machinery by which public affairs are conducted. Consequently there has been no attempt to give many facts about governmental structure or procedure except as to a few topics which are of recent origin or on which information is not readily available, such as budget systems in the American states, the reorganization of state administration, the initiative and referendum, and the League of Nations. As stated in the preface, the book is intended "to supplement the works now available on the description and analysis of governments," and not "to train the memory by a repetition of facts." It has been prepared primarily for use in elementary college courses but also contains much information which should prove of interest to the general reader who is looking for a statement of the more important current issues in governmental organization and control.

In order to furnish the proper background for the study of modern political problems, the first three chapters, constituting Part I, take up briefly the evolution of political institutions, theories as to the origin and development of government, the newer ideas as to sovereignty and the relation of political science to other subjects such as history, economics, sociology, law and psychology. Part II, entitled "Problems of Public Control of Government," is devoted to a discussion in a lucid and interesting manner of the problems connected with public opinion in relation to popular control, political parties, the direct primary, the short ballot and the merit system. Part III, on "Principles and Problems of Government Organization and Administration," considers such matters as constitutions and constitution-making, federalism, parliamentary versus presidential systems, questions arising out of legislative organization and methods, the need for administrative consolidation and recent tendencies in the administration of justice. Among the most interesting and valuable features of this portion of the book are the discussion of uniform legislation, small claims courts, actual plans of state administrative reorganization, and the plans proposed or adopted for improving the work of legislative bodies, the

decline of which has been mentioned by Lord Bryce as one of the most striking defects of modern democracies.

In the final part of the volume attention is directed to a few of the more specialized problems in the operation of government, including an analysis of public expenditures and causes of their increase, budget systems, regulation and control of public utilities, world politics and the various views as to the proper extent of governmental functions. Throughout the work the authors have given chief consideration to the issues relating to American government, but certain features of foreign countries are discussed by way of comparison and contrast. Each topic is so treated as to set forth one or more problems for further enquiry and discussion and additional references are suggested for this purpose.

The volume has very few errors or apparent faults. One or two minor matters, however, might be criticized. The author of "Principles Governing the Retirement of Public Employees" is Lewis Meriam, not Merriam (pp. 188, 196). The local government board in England has been absorbed by the new ministry of health (pp. 354–355). The opening chapter on the origin and development of government, which attempts to trace the history of political institutions in the brief space of thirty-five pages, is too sketchy to be of much value except as an outline. But these matters are of minor importance, and the book as a whole is a most useful and opportune one. The style of the authors is simple, clear and readable, each chapter is followed by a selected list of supplementary readings and there is a fairly complete index.

A. C. HANFORD.

Harvard University.

An Introduction to the Problem of Government. By W. W. WILLOUGHBY and LINDSAY ROGERS. (New York: Doubleday, Page and Company. 1921. Pp. 545.)

This is one of the most notable among recent books on the general problems of political science and government. It deals with political theory and practice in the light of the world's experience. The book is not a systematic treatise in the ordinary sense; it does not purport to include the whole range of governmental activity. As its title implies, it is an "introduction" to the general problem of governing a free people. A glance at the table of contents will show that the authors have singled out practically all the great questions of government which are engaging the public interest today. It is a book for the live teacher

and student of contemporary affairs—not for the antiquarian or the delver into origins.

The twenty-four chapters are devoted to the most essential features of political life and governmental methods. Little unnecessary detail finds its way into the text, but the great principles of government are given adequate treatment. There is, however, at the present time, some reason to believe that more attention might be given to the problems of foreign policy, or foreign relations. Since the overthrow of Orlando, Clémenceau and Wilson, and the rise of questions relating to the treaty-power, it would seem fitting, even though it is not customary, to lay particular stress upon this topic in a work on problems of government.

One of the noteworthy features of this work is the vigor with which it eulogizes democratic government and points out the defects of monarchical rule. The authors point out that republics rest on "the principle that all powers of the government are derived by grant from the people." They admit that it is possible to have a king rule by virtue of delegated powers based on a grant from the people. This, they maintain, would not violate the principle of the republic. It would be violated, however, if the king claimed to rule by "an original personal right."

The constitution of Japan is discussed as having a great deal yet to attain on the road to a democratic government. This discussion follows one in which the development of the democratic German commonwealth from the monarchical empire is traced. The survey of Japanese government ends with the expression (quoted from Professor McLaren) of a hope for a further democratization of her government. The Japanese constitution is given in an appendix.

In view of the tremendous extra-constitutional power wielded by the major political parties, the authors have stressed the significance of this feature. Their power in Congress is particularly well portrayed.

On page 263 the following statement appears: "It is a striking fact that two long-fought political causes—Woman Suffrage and Proportional Representation—were greatly aided by the War." This is undoubtedly true, but the same thing might be said of prohibition, budget reform, and economic reconstruction. The authors devote a whole chapter to budgetary procedure, and it is well that they do so; the time has come when this topic should be handled not as reform propaganda but as an integral feature of our governmental practice. The text of the budget and accounting act of 1921 is given in an appendix.

An enlightening chapter is devoted to proportional representation. New and highly significant figures are tabulated and they throw into strong relief some of the glaring inequities of the district plan of representation. An appendix carries the text of the British proportional representation scheme of 1918.

The book is a conspicuous contribution to the post-war literature on governmental problems. The numerous illustrations from American experience make the work acceptable to the American student, but the text is also fortified at every point by illustrations from British governmental experience as well.

J. EUGENE HARLEY.

University of Southern California.

Popular Government. By ARNOLD BENNETT HALL. (N. Y.: Macmillan Company. 1921. Pp. 296.)

Popular government, according to Professor Hall, rests upon public opinion. He therefore analyzes popular opinion, its formation, value and limitations, and finds, as President Lowell before him found, in *Public Opinion and Popular Government*, that public opinion is not necessarily based on facts or knowledge, but on inherited traditions, or even mere prejudice. On whatever based, real public opinion is conclusive in popular government. But public opinion is not merely the opinion of the majority; it "must be such that while the minority may not share it, they feel bound, by conviction not by force, to accept it." In his discussion of the possible improvement of public opinion, Professor Hall stresses education, the press, citizenship, and especially party leadership, showing in the case of party leadership how conclusive it is on matters outside the domain of common knowledge, for example foreign affairs.

Professor Hall is a firm believer in representative government as opposed to direct democracy, and the greater part of the book is taken up with a critical analysis of the instruments which have been tried to insure the rule of the people. The direct primary, presidential primary, the initiative and referendum, the recall of judicial decisions, and the recall of officers are subjected in turn to searching but by no means unsympathetic criticism. In each case their limitations are shown to be the impossibility of obtaining either an accurate expression of public opinion, or the fact that any direct expression of public opinion would be of less value than that given by representatives. True to his thesis,

that representative government rather than direct democracy is desirable, Professor Hall firmly believes in constitutional restraints, which, interpreted by the judiciary, are binding upon officials and legislatures alike. He favors the short ballot movement as the best means by which representatives and officials may be chosen who shall adequately express public opinion.

Although Professor Hall modestly asserts that he has no contribution to offer, his analysis of the institutions he studies and the development of his thesis is sympathetic, and his presentation novel and convincing. The conservatives and those attached to representative government will find their convictions strengthened, while the proponents of direct government will be compelled to reëxamine the foundations of their faith.

EVERETT KIMBALL.

Smith College.

A New Constitution for a New America. By WILLIAM MACDONALD. New York: B. W. Huebsch, 1921. Pp. 260.)

This is not a radical book. Dr. MacDonald is opposed to the initiative and referendum in federal affairs. He does not advocate proportional representation. Though proposing the direct popular recall for congressmen and senators, he would extend the terms of the former to four years. Though he would reduce the terms of the latter also to four years, he would not alter the equal representation of the states in the Senate, despite their great and growing inequalities in population, wealth, and political importance. He is opposed to all primary legislation and other laws for the regulation of the affairs of political parties. Nor is anything said about the further development of the federal corrupt practices acts in order to diminish the power of wealth in politics and to foster the supremacy of an enlightened public opinion. In short, the progressive movements of the decade before the war in the field of state government have left him cold and indifferent.

The author approves certain increases in the powers of the Congress. He would give it jurisdiction over divorce, the creation and regulation of business corporations, and any occupation or industry which is in fact national or interstate in scope. But he is vehemently opposed to national prohibition. The states, he thinks, should be prohibited from making any law respecting the establishment of religion, or abridging the freedom of speech and of the press. The state militia

should be abolished. Universal suffrage should be established throughout the Union for federal elections, and the Congress should have exclusive control thereof. Congressmen should be elected in each state at large on a general ticket, half of them in such a manner as to represent the dominant economic group within the state. He approves an executive budget system, but his panacea is responsible cabinet government upon the model of the British parliamentary system.

Dr. MacDonald gives little consideration to the probable operation of the constitutional changes which he proposes. His plan for occupational representation would mainly tend to increase the representation of the farmers in the Congress of the United States. As this is already the most influential class in national politics, it is difficult to guess what he expects to gain by such a measure. His plan for the liberation of parties from legal control would mainly tend to restore the conditions that prevailed before the introduction of the direct primary. The introduction of cabinet government in the traditional British form would tend to bring about in this country the very conditions from which radical political reformers abroad are trying to escape. In short, if Dr. MacDonald did not enjoy a hard-won reputation as a forward-looking publicist, and could be judged only by this volume, it would be necessary to put him down as an apostle of reaction.

A. N. Holcombe.

Harvard University.

Le Gouvernement par les Juges et la Lutte contre la Législation Sociale aux Etats-Unis. By Edouard Lambert. (Paris: Marcel Giard & Cie. 1921. Pp. 276.)

Few, if any, Americans have analyzed their judiciary from the standpoint of its control over legislation so thoroughly as Professor Lambert of the University of Lyons has done. His analysis is supported by references to and quotations from opinions of the Supreme Court and of some state courts, the *Congressional Record*, bulletins of the bureau of labor statistics, technical legal works such as Wigmore's *Evidence*, almost all monographs and other books dealing with any of the phases of judicial supremacy, reports of bar associations, numerous articles in all the leading American law journals, in the political science and economic reviews, and in some more popular American magazines. *Le Gouvernement par les Juges* is, however, much more than a digest of this mass of material. As an impartial observer, trained by the study

of comparative law, Professor Lambert is struck by the peculiarities of the legal system to which Americans have become accustomed. His conclusions are therefore worth noting even though he seems chiefly intent on pointing out to his own countrymen what may be expected if their courts, at the behest of Charles Benoist, Jules Roche and others, follow the American example. Some recent decisions of French courts are indeed approaching American practice by interpreting legislation to conform with the individualistic principles of the *Code civil*. A second purpose is to point out to French students of comparative legislation that "the American statute is always an incomplete and sometimes a false expression of juridical reality," a fact that some seem to have overlooked.

The inferior position of the American statute is due, primarily, to the extension during the last twenty-five or thirty years of judicial control over the constitutionality of laws. Prior to 1883, approximately, judicial control extended only to legislative competence over certain subjects and not at all to the manner in which the legislature exercised its right. Willoughby's *Constitutional Law* and Bryce's *American Commonwealth* describe the judiciary as it functioned in this early period. Since 1883, judicial control has been extended under cover of the bill of rights and the Fourteenth Amendment. By the opening of the twentieth century the American judiciary has been able to exercise constant supervision over legislation. This supervision has been aided by the development of two criteria, "reasonableness" and "expediency," representing opposing tendencies. The one is used to keep statute law within the bounds of common law, the natural, hence reasonable law. The other is used when the court is willing to permit a modification of the common law.

Social legislation furnishes the best field for studying judicial supremacy. Acts forbidding wage payments in store orders and workmen's compensation acts were among the laws declared beyond the power of legislatures to enact until long after European governments had adopted similar measures. The supposedly more progressive attitude of the United States Supreme Court is largely delusive. In general the decisions of the judges as to the constitutionality of social legislation are "dominated by their mental attitudes or by their predilections based on heredity, environment and education, as are the verdicts of all other juries." Realization of this power possessed by the courts is held largely responsible for the persistence of the popular election of judges in the states. The recall of judges and of decisions will afford little or no relief from judicial supremacy.

Recent discussions lead Professor Lambert to consider the view, at first incomprehensible to one accustomed to parliamentary government, that there are limitations on the amending power which the courts can enforce. If, for instance, an amendment took from the courts the determination of what constitutes "due process" or subordinated the judiciary to the legislature, Professor Lambert predicts it would be declared invalid by the courts. The court's opinion in Rhode Island v. Palmer asserts "a right as much of construction as of constitutional control over amendments" and demonstrates that, "if thus far the court has exercised its control only as to the regularity of the amending process, it has never renounced the extension, the case arising, to the verification of the legality of their contents." The recent decisions of the supreme court of Colorado (People v. Max, 198 Pac. 150. Also, People v. Western Union, 198 Pac. 146) invalidating the recall of judicial decisions amendment were probably rendered too late to furnish additional support for Lambert's conclusion. Another possible extension of judicial authority which is taken up is the control over treaty-making.

The second reason for the inferior position of the American statute is that American courts have broader powers of construction than French or even English courts have, because this power is associated with that of declaring acts invalid. The power of construction is aptly illustrated by a detailed review of the Supreme Court's treatment of the Sherman and Clayton Acts. A third reason for the American statute's inferiority is attributed to the influence of legal education, particularly the case-method of teaching law.

Finally, three palliatives for judicial review are considered: advisory opinions, declaratory judgments and administrative application of statutes. The first would be an improvement, but is rendered practically impossible by strongly established traditions. The doubtful success of the second would decrease neither the lack of coördination nor the instability of judge-made law. It would only increase the undesirable element of subjectivism. Little can be hoped for from the third, as long as administrative tribunals have to work under the supervision of the courts. Before administrative justice can aspire to supplant the justice of the courts it must become its equal. There is a long road to travel before this will be attained. The examination of the three palliatives is concluded with this remark: "After having encircled the judicial stronghold looking for fissures, I ask myself how the adversaries of this system of government can, without departing from

constitutional methods, secure its overthrow except by slipping in as defenders of the stronghold in order to open to their companions in arms the only practicable entrance—that which is barred by control over the constitutionality of the laws."

Dealing with such a mass of material in a foreign language, minor errors in citations, in names of writers and titles of their works are to be expected. Perhaps the most serious error appears on the first page where the Godcharles case is referred to as having been decided in the supreme court of Massachusetts, though the footnote correctly cites the Pennsylvania state reports. Barnard's monograph, there incorrectly referred to as in the Johns Hopkins *Studies*, is correctly cited on page 69. There is no index. The book is admirably written in the inimitable style which is so characteristically French.

HOWARD WHITE.

University of Illinois.

Le Vote des Femmes. By JOSEPH-BARTHÉLEMY. (Paris, F. Alcan, 1920. Pp. xi, 618.)

This brilliantly argued case for the enfranchisement of French women, presented in a book which has been crowned by l'Académie des Sciences Morales et Politiques, is the outcome of the author's lectures at the École des Sciences Politiques.

He surveys with clearness and enthusiasm considerations that have long been familiar ground in the literature of equal suffrage. All the theoretical pros and cons, which have already come to have a merely academic interest in this country, are reviewed. The right to vote is found to be derived from the principles of democratic representation, upon which modern public law is founded. The suffrage is further declared to be an instrument for defending interests. Women have interests to defend, for, in spite of the modifications which have been made in the Napoleonic Code, the French law leaves women in a position of marked inferiority. Less is spent on their education; they may not serve on a jury or witness a birth certificate; in marriage, domicile and nationality are determined by the husband; the mother has nothing to say legally as to the education or religion of her children. Moreover, the seven and one-half million wage-earning women in France need the vote to repeal the masculine laws prohibiting them from entering public work and the professions. They need the vote to secure a living wage.

In May, 1919, the French Chamber of Deputies voted full equality of political rights to women, but the Senate has not approved the action. The practical effects of woman suffrage in the countries where it does function are made the prime object of the study in order that the experience may be utilized for France. This experience is set forth in great detail and with a really amazing familiarity with a wide range of literature. Especial attention is given to England as the first great sovereign state to realize political equality of the sexes. The interesting account of the history in the United States is not carried to the point of the adoption of the Nineteenth Amendment.

It is noted that no Latin or Catholic countries have joined the equal suffrage ranks, that the first experiments were all in weak countries and later in great states, and that they have everywhere been made as the result of long-continued efforts of the women themselves. In the actual exercise of the franchise, women are found to use the right to vote, but to remain relatively inactive in the preliminaries; they have not tended to form separate party organizations. The experience of the American states is cited to show improvement in women's economic status with the vote, in the opening of new and better employments. With woman suffrage has come a mass of needed social legislation: the protection of mothers, children, and women workers, and laws for the control of prostitution, drugs and drink. Concluding, the author declares unconditionally for parliamentary elegibility of women and for equal suffrage.

AMY HEWES.

Mount Holyoke College.

The Pageant of Parliament. By MICHAEL MACDONAGH. (N. Y.: E. P. Dutton and Company. 1921, 2 vols. Pp. 252, 241.)

Many books have been written about the organization and powers of Parliament, but we have had very few portrayals of the "Grand Inquest" at work. Mr. MacDonagh's volumes are well-named, for they present a lively and comprehensive picture of Parliament as a going concern, in all its moods and actions, and with all its striking pageantry. They deal with many topics which never find place in the standard treatises on English government—with the humors and tragedies of debate, the oddities of procedure, and with the tribulations of the average M. P. The pages are well-stocked with anecdotes; the great parliamentary figures of the past generation flit in and out before

the reader's eyes. It is all very interesting and makes a strong appeal to anyone with a liking for the picturesque. No writer has ever more vividly shown us what a remarkable body this Mother of Parliaments is—its combination of quaint mediaevalism with aggressive modernity.

For thirty-five years the author has sat in the press gallery at Westminster and not much has been allowed to escape his eye. But his volumes contain a good deal more than the fruits of casual observation. Mr. MacDonagh has been a careful student of parliamentary history and traditions, of constitutional usages and legislative practice. He has mastered all that one finds in the treatises, and more. This has enabled him to measure the significance of the things that he now writes about. Those whose reading has brought them into contact with the author's earlier books need only be assured that the style of these later volumes is equally interesting and the contents even more so. Here is a spirited chronicle of Parliament, in its contrasts of solemnity and gaiety, its ceremonies and customs, its achievements of oratory and statesmanship, and all the rest. Avoiding the usual paths, Mr. MacDonagh has betaken himself to the byways in search of fresh and apt anecdotes to brighten up his descriptions, and his quest has been notably successful. The American teacher who desires to liven his lectures on English government with sprinkling of human touches will find *The Pageant of Parliament* a godsend.

W. B. M.

Geschichte des Neueren Schweizerischen Staatsrechts. Bd. I, *Die Zeit der Helvetik und der Vermittlungsakte, 1798–1813.* Von Dr. Eduard His. (Basel. Helbing & Lichtenhahn. Pp. xix, 691.)

The interesting and formative period in Swiss history from 1798 to 1813 has been covered already by many writers who have dealt with the subject from the various viewpoints of the political, military, and general historian. Until the appearance of the present volume, however, no one has attempted to give a systematic and connected account of the history of Swiss public law as a whole during the period of the Helvetic and Mediation Acts. There can be no doubt that this careful and exhaustive work by Dr. Eduard His will at once take rank as of the highest authority. Following a general survey of the constitutional development of the period, he analyzes in the most admirable

manner the various constitutional provisions dealing with the rights of men, the form of the state, citizenship, territories and territorial divisions, popular sovereignty, the constituent power, separation of powers, representative principle, organization of separate powers, equality before the law, freedom of religion, of the press, right of public assembly, of petition, of settlement, freedom of industry and commerce, private property, taxation, military duty and organization, the schools, etc. American readers of this monumental work will be interested particularly in the various references to the influence of our own Constitution upon the mind of Napoleon when he was drawing up the Act of Mediation.

ROBERT C. BROOKS.

Swarthmore College.

Occasional Papers and Addresses of an American Lawyer. By HENRY W. TAFT. (New York: The Macmillan Company. Pp. xxiii, 321.)

The seventeen papers and addresses collected in this volume are in Mr. Taft's own introductory words "the by-product of a busy professional life."

They cover a wide range of topics, ranging from after-dinner remarks to learned dissertations on subjects of constitutional law. Some of them are trivial; some are ephemeral; none show any marked brilliancy of style or originality of thought; and yet the general impression gained from reading them is that the author feels far more keenly than most of his colleagues the sense of social responsibility and political obligation which rests upon the American bar and bench; and that "stimulation to greater effort in promoting the effective administration of justice and a more active performance of the duties of citizenship" is needed.

The most valuable paper in the book is called "Some Responsibilities of the American Lawyer," an address delivered by Mr. Taft as president of the New York Bar Association, January 16, 1920. This might well become a reading in any college course in American government.

Mr. Taft's strong argument against "The Recall of Decisions" is impaired by his attempted justification of such decisions as the Jacobs case (98 N. Y. 98) and the Williams case (189 N. Y. 131). Here he begs the question completely. Why not frankly admit that such

decisions were anachronisms—bad law? Neither the constitution of New York nor that of the United States has been changed by a syllable in respect to the sections discussed in these cases; but does Mr. Taft believe that such decisions as these would be made today?

Not the least interesting part of the work is the comment on Roosevelt, in the introduction. But chiefly the historian of about the year 2050 will give thanks to Mr. Taft for preserving to him much valuable material.

JAMES P. RICHARDSON.

Dartmouth College.

Fair Value: The Meaning and Application of the Term "Fair Valuation" as used by Utility Commissions. By HARLEIGH H. HARTMAN. (Boston and New York: Houghton Mifflin Company. Pp. xix, 263.)

This book is one of the most recent Hart, Schaffner & Marx prize essays. The author is lecturer on Illinois public utilities law in Northwestern University. In the chaos of valuation literature and valuation practice, particularly in these times of abnormal price conditions, Hartman's book stands out like a beacon light. He calls us back to fundamentals. As his subject deals with the public relations of private property devoted to public use, he has to start out with a definition. "Property," says he, "is a bundle of rights, the units of which are constantly changing with economic changes and their legal recognition. Property as distinct from possession implies exclusive control. Such control can exist only by consent of the state. The sanction of society and force of government are necessary to protect the owner's interest. The presence of an organized social state is essential to the existence of private property. It is purely a social concept, and the rights constituting property at any given time depend upon social arrangements sanctioned by the state with a view to the general welfare."

With respect to public utilities, he says: "The basis of regulation is to be found in the governmental nature of the service. The social side of the private property devoted to the public use necessarily becomes dominant."

Throughout his essay, the author keeps these fundamental concepts before him. Public utilities are for public service. Private property exists only on sufferance. Regulation necessarily means that in case

of conflict the public interest shall prevail. "The rates fixed," says the author, "must be low enough to encourage general use of the service, or all other features of regulation will be nullified. This phase of regulation is all-important. It is only through general use that the utility service can build up the community and promote the public welfare."

After reviewing in detail the development of the "fair value" rule in the decisions of courts and commissions, he reaches the conclusion that "the aim is to determine the actual, unimpaired, reasonable investment in property used and useful in rendering the public service," and that "for this purpose the original-cost appraisal serves best."

Hartman's book will be indispensable to valuation experts and regulating authorities.

DELOS F. WILCOX.

Elmhurst, N. Y.

The Non-Partisan League. By ANDREW A. BRUCE. (New York: The Macmillan Company. 1921. Pp. viii, 284.)

In the REVIEW for August, 1920, will be found a sketch in which my colleague, Professor J. S. Young, outlined the contents of Herbert E. Gaston's book, *The Non-Partisan League.* That book was written by one who has actively supported the league; the work here under consideration is by a man who is frankly opposed to the league's leadership and to many of its policies. Judge Bruce was chief justice of the North Dakota supreme court when the league first made its bid for power in that state. He knows and describes for us the causes of the movement, its membership, its leadership, and its aims. He traces its rise from small beginnings until it dominates every branch of the state government. He follows its course during its brief period of supremacy, and he predicts the reverse in fortunes which has since overtaken it. As this brief review of his book is being written, the chief Non-Partisan officials of North Dakota have been retired to private life by means of the recall, and Mr. Townley, most potent of the Non-Partisan political leaders, has begun to serve a sentence in a Minnesota county jail for violation of the state's sedition law. Temporarily the league is in almost complete eclipse.

The author's thesis is that there is a sharp line of cleavage in thought and purposes between the leaders and the members of the league. The great body of farmer members are pictured as a conservative, landowning class, primarily interested in buying cheaper and selling dearer,

and wedded to the institution of private property. The leaders, on the other hand, are described as "consistent socialists," forming a "socialist hierarchy" which has misled the members and is really using the league as an instrument for bringing about "state socialism in all things except in farm lands" and as "an entering wedge for the American International." The fact that many of the leaders are former Socialists is hardly a sufficient demonstration of the proposition stated; their actions and speeches since joining the league show them to be less affiliated in thought with the Socialist than with the defunct Populist party, and to be working for public-ownership and agrarian reforms patterned after the New Zealand model. On the other hand the farmer members of the league have undoubtedly been brought largely to the acceptance of the same views. While recalling the Non-Partisan officials at the recent election the voters failed to rescind the program of state-ownership legislation. "Europeans would call this [program] State Socialism," Bryce remarks in *Modern Democracies*, "but it is meant to be merely a practical attack on existing evils, and there is no sympathy, beyond that which one kind of discontent may have with another, between the Socialistic Communism of a theoretic European type and these land-owning farmers who are thinking of their own direct interests."

Judge Bruce would be the last to claim that his work is the final work on the Non-Partisan League. Properly described, his book is the spirited chronicle and critique of a man who was active in the struggle. His first-hand knowledge has enabled him to put his finger upon the greatest weakness of the league under its recent leadership, namely its almost complete lack of political morality. Urged by an irresistible impulse to accomplish its social and economic program, the league's leaders and the league-elected state officials rode rough-shod over whatever laws, institutions, private rights, or public understandings stood in their way. While feigning non-partisanship, they were most violently partisan. They practically nullified state primary laws. They denounced "boss" control in other parties, yet refused for years to give the members any real control over the Non-Partisan League. They ruled the legislature through a rigid caucus system. They dragged the courts into politics. They suppressed the opposition press, seized coal mines without color of law, and even attempted to amend the state constitution by ordinary legislative act. It is useless to give further details. Judge Bruce presents them all and it must be recognized that he has here made a distinct contribution to our knowledge of this interesting and still influential movement.

WILLIAM ANDERSON.

University of Minnesota.

The Port of New York. By THOMAS E. RUSH. (Doubleday, Page and Company. 1920. Pp. xiv, 358. Illustrated.)

This is a rather rambling, sketchy, gossipy account of the port of New York—its historical development, its present activities, its needs. The author's stated purpose is to make better known the national importance of the country's greatest port. A great deal is said about the indifference of various agencies—political, civic and commercial—to the promotion of the port, and particularly it criticizes business interests for failure to more effectively support the recently proposed New York and New Jersey "port treaty."

The first chapters of the book are historical, beginning with the earliest discoveries. Chapters are then devoted to such topics as piracy and smuggling; the official activities of the customs service, particularly the work of the surveyor's office; the American merchant marine; fortifications; immigration; harbor improvements; and so on. The chapter on a free zone is a summary of the tariff commission's report on that subject. Another chapter treats of the teaching of "port truths" in schools and colleges. The above will sufficiently indicate the wide range of topics touched upon. The book, confessedly, offers little that is new. The fragments of information assembled may possibly aid in creating a greater popular interest in New York's port development; but beyond this its service is limited.

G. B. ROORBACH.

Washington, D. C.

BRIEFER NOTICES

Coming as it does close to the three hundredth anniversary of the landing of the Pilgrims, *The Founding of New England*, by James Truslow Adams (Boston: The Atlantic Monthly Press, pp. 482), is a most timely book. Drawing upon a wealth of material much of which has come to light only in recent years, the author deals chiefly with the origins and history of New England to the close of the seventeenth century, discussing the discovery and settlement of the region; "the genesis of the religious and political ideas which there took root and flourished; the geographic and other factors which shaped its economic development; the beginnings of that English overseas empire, of which it formed a part; and the early formulation of thought—on both sides of the Atlantic—regarding imperial problems." The struggles and history of the early settlements are retold with new knowledge and a new point of view, with

emphasis upon the social and economic factors rather than upon theological or theocratic ideas. Of particular interest to the student of political science are the chapters on imperial control and administrative experiments within the colonies, especially the attempts at consolidated administration. The whole book is a most scholarly and interesting narrative with scarcely a dull page from beginning to end. It is hoped that the author will carry out his intention of making this volume the introduction to a series which will bring the history of New England down to date.

The History of the San Francisco Committee of Vigilance of 1851 (University of California Press, pp. xii, 543), by Dr. Mary Floyd Williams, is a reinterpretation of the social life of California during the crisis of the gold fever. Earlier accounts, Charles Howard Shinn's *Mining Camps* (1885), Josiah Royce's *California* (1886), and H. H. Bancroft's *Popular Tribunals* (1887), have in common a distinctly moral point of view. They interpret the gold period in uncompromising terms of right and wrong. Dr. Williams, in accord with later ideals of historical research, is less inclined to pose as a dispenser of halos and gridirons. She has studied more carefully and impartially than her predecessors the source materials, particularly the archives of the committees of vigilance, and has edited the minutes and miscellaneous papers, financial accounts and vouchers which appear as volume four of the Publications of the Academy of Pacific Coast History, under the title *Papers of the San Francisco Committee of Vigilance of 1851* (University of California Press, pp. xvi, 906). The years spent in collecting, studying and editing these documents have acquainted her with the men and women of this earlier age, and she regards them as little better or worse than their children of today. She therefore seeks to account for their deeds by explaining the social conditions which impelled them to action. The California settlement is treated as similar in many respects to earlier extensions of the frontier of American democracy. Here as elsewhere there was common acceptance of the theory that the state was created by a voluntary compact between contracting parties who possessed inherent rights. Closely linked with this was the distrust of a centralized form of government, a demand for utmost liberty of action in domestic affairs. But local government was notoriously weak in suppressing disorder in the outer line of settlements and this fact explains in large measure the necessity for the San Francisco Vigilantes as well as for other self-appointed defenders of "law and order" in other frontier communities.

The Journal of the Missouri Constitutional Convention of 1875 has just been published by the State Historical Society of Missouri (2 vols., pp. 954). The journal proper is prefaced by a historical introduction on constitutions and constitutional conventions in Missouri, by Isidor Loeb of the University of Missouri, and a biographical account of the personnel of the convention by Floyd C. Shoemaker, and is followed by an appendix giving data as to the members of the convention and a list of the convention committees, and by a comprehensive index. The work has been printed in convenient form and will be of use to historians and other students, and will be of special service in connection with the proposals for a new convention in Missouri to revise the state constitution.

George Young formerly of the British diplomatic corps with twenty years of experience to his credit has written a short book on *Diplomacy Old and New* (Harcourt, Brace and Company, pp. 105) as one of the latest of the series of Handbooks on International Law edited by Lowes Dickinson. The book is largely a criticism of the British diplomatic service with constructive suggestions for reform. As stated by the author: "The public is revolting against orthodox diplomacy; much as it is against orthodox divinity, and for the same reason—its failure to secure peace on earth to men of good will" (p. 15). The beginning chapter on diplomacy and personnel recommends a number of administrative changes for improving the make-up of the service and bringing new blood into its ranks. The second chapter criticises the present practice of ignoring Parliament in foreign affairs and pleads for more democratic control of foreign policy through the creation of a parliamentary committee on foreign affairs. The final chapter on diplomacy and peace contains a plea for educating public opinion on matters concerning foreign relations and also recommends the establishment of a school of foreign affairs in London for the training of young men for the diplomatic service. No matter how far the reader may differ from Mr. Young in his criticisms of British diplomacy he will find a brilliant analysis of present conditions and much food for thought in this book.

The Neutralization of States: A Study in Diplomatic History and International Law by Clair Francis Littell (Meadville, Pa. The Author. Pp. 181) is a monograph which, as the title indicates, deals with subjects made more lively by the war and the Treaty of Versailles, especially as concerns the past history and present and future status of Belgium, Switzerland and Luxemburg. The study is really a history

of permanent neutrality, taking up briefly the idea of neutrality from the days of Grotius, armed neutrality, its development by the United States, and the successful establishment of permanent neutrality in 1815, and describing various joint acts for its guarantee. A chapter is devoted to each of the permanently-neutralized states, Switzerland, Belgium, Luxemburg, and the Congo Free State, and to the various miscellaneous neutralities, such as Cracow, Savoy, Greece, and Samoa. The remainder of the monograph deals with the abstract and theoretical considerations connected with the subject as a part of international law and is a "technical study of the rights and duties of permanent neutrality." In conclusion the author cannot predict the continuance of permanent neutrality as one of the institutions of Europe, which seems to him to depend upon the outcome of the "present attempt at World Organization." A six page bibliography and index complete this study.

The New World of Islam, by Lothrop Stoddard (New York: Charles Scribner's Sons. pp. 355), has for its main theme the Mohammedan revival of the nineteenth century and the spread of liberal principles and western progress in the Moslem world during the present century. By way of introduction the author sketches briefly the rise and decline of the old Islamic world and then traces in a lucid and readable manner the spread of Pan-Islamic sentiment and the political, economic and social changes that have recently come about in the Mohammedan countries of the East. There are interesting chapters on nationalism in Turkey, India, Arabia and Persia and on the spirit of social unrest that is now prevailing in the Near and Middle East where Bolshevist activities have been increasingly apparent since the beginning months of 1919. Mr. Stoddard is of the opinion that this latter development is fraught with considerable danger but concludes that "if there is much to fear for the future, there is also much to hope."

As the eighth edition of the *Manuel de Droit International Public*, by M. Henry Bonfils, M. Paul Fauchille has prepared a comprehensive *Traité de Droit International Public* in two volumes. Volume II on war and neutrality has been published first (Rousseau & Cie, pp. 1095), and Volume I on the international law of peace is announced as in press. This work includes a complete revision of the earlier work of M. Bonfils, and the volume published includes the important and far-reaching events and problems which arose during the world war. The concluding chapter deals with the international law of the future.

Thoughts on War and Peace, by Nicholas Petrescu (London; Watts and Company, pp. 124) contains "an inquiry into the conceptions prevailing in foreign politics." The author endeavors to prove that we can have no "new order" in international relations until we change altogether our conceptions of war and peace. The trouble with the League of Nations, he believes, is that it rests on national conceptions which are out of consonance with the ideals of humanity.

Various lectures by well-known English scholars on *The Evolution of World Peace* have been brought together under the editorship of F. S. Marvin (Oxford University Press, pp. 191). In addition to three lectures by the editor, the volume includes important and interesting discussions of "The Work of Rome" by Sir Paul Vinogradoff, "Grotius and International Law" by G. N. Clark, "The French Revolution as a World Force" by G. P. Gooch, "The Congress of Vienna" by C. R. Beagley, and "An Apology for a World Utopia" by H. G. Wells. The names of these contributors afford a sufficient guarantee of high excellence.

In *The Isolation Plan* by William H. Blymyer (Cornhill Publishing Co., Boston, pp. 152), the author argues that only one kind of disarmament is practicable—general disarmament—and that under no other arrangement can the peace of the world be assured. With general disarmament should go universal arbitration of disputes and non-intercourse with malefactor states.

The most interesting pages in James A. Wood's *Democracy and the Will to Power* (Alfred A. Knopf, pp. 245) are in the Introduction, where H. L. Mencken gives a brief digest of the author's argument and adds his own approving comments. The volume embodies, we are told, "the first serious attempt, at least by an American, to get at the fundamentals of the democratic process of government." The attempt, apparently, has been quite successful from the standpoint of those immediately concerned, for democracy stands revealed as a sham and a swindle. Mr. Wood believes that democracy, in actual practice, has little to do with the determination and execution of the popular will—or even the will of the majority; it is merely a conflict between minority groups which are enabled by various devices to bend the majority to their purposes.

The series of six handsome volumes, issued by the Yale University Press, under the general title *How America Went to War*, has now been completed. The entire series has been written by Hon. Benedict Crowell, formerly assistant secretary of war, and Captain Robert Forrest Wilson. The first three volumes, which appeared several months ago, bearing the titles *The Road to France* and *The Giant Hand* were noticed in previous numbers of the REVIEW. They have now been followed by two volumes on *The Armies of Industry* and a concluding volume on *The Demobilization*. Taking the series as a whole it constitutes a most vivid, accurate and interesting account of America's effort in the great crusade.

The two volumes on *The Armies of Industry* deal with the procurement and mobilization of munitions and supplies, with an opening chapter on war department organization. The material has been wholly drawn from official sources and is therefore trustworthy; but it is not put together after the fashion of official reports. On the contrary the facts and figures are woven together into an interesting story wherein the personalities stand out clear and prominent. It is an amazing story all the way through, and one that future generations of Americans will appreciate. Our people never adequately realized, during the years 1917–1918, how large a fraction of the nation's energy and resources were being thrown into the scale. When Ludendorff whimpered that "those Americans know how to make war," he expressed a correct although a somewhat belated conclusion. Not least among America's war achievements, moreover, was the demobilization, as Messrs. Crowell and Wilson demonstrate. It was in this management of the "Transatlantic Ferry" that the military organization reached its peak of efficiency. The illustrations in these books, as in the earlier volumes of the series, are entitled to the highest commendation. No such set of war pictures has been brought together elsewhere. As masterpieces of bookmaking these volumes would be difficult to excel.

Under the auspices of the Carnegie Endowment for International Peace, the Oxford University Press continues its series of highly useful volumes on various topics of international interest. Among the more recent of these publications are the second and third volumes of *The Proceedings of the Hague Peace Conferences*. The first volume in this series was issued during 1920 and dealt with the plenary meetings of the conference. The second volume covers the meetings of the first

commission, while the third volume includes the sessions of the second, third and fourth commissions In all cases the proceedings, acts and documents are translated from the official text. Another series of two volumes includes the *Treaties and Agreements with and Concerning China, 1894–1919*. The compiling and editing of these documents is the work of Mr. John V. A. MacMurray of the United States Diplomatic Service, who served for some time as secretary of the American Legation at Peking.

The Economic Causes of Modern War, by John Bakeless, is published by Messrs. Moffat, Yard and Co. (pp. 265). The book is an outgrowth of an essay which won for its author the David A. Wells Prize at Williams College. It deals with the economic motives of colonial rivalry and indicates the dominating part which economic motives of all sorts have played in international relations since 1878. There are chapters on "The Prevention of War by International Finance" and on "The League of Nations."

The Colonization of North America, by H. E. Bolton and T. M. Marshall (Macmillan's, pp. 609), includes a narrative of European expansion in North America down to 1783. The authors point out that most American books in this field have dealt with the colonization of the New World almost wholly from the English standpoint, neglecting the French and Spanish phases. So this book takes a broader range and by so doing presents many familiar things in a new light. They show, for example, that there was an Anglo-Spanish and a Franco-Spanish, as well as an Anglo-French struggle for the continent. Spanish colonization, however, gets a good deal more space in this volume than does the French attempt at empire-building. The sixteen pages which give a survey of the French efforts on the St. Lawrence and on the Mississippi Valley are little more than the barest chronology (pp. 86–102) and not always accurate at that. It is not correct to say that "Talon established a type of feudalism" in New France (p. 92); there were scores of seigniorial grants before Talon came. The narrative is almost wholly chronological with relatively little discussion of the points of contact between the various colonial systems.

The Carnegie Institution at Washington has published the first of a series of volumes of *Letters of Members of the Continental Congress*, edited by Edmund E. Burnett (pp. 572). This volume includes letters from August 29, 1774 to July 4, 1776. Three other volumes are nearly ready for printing.

A new volume in the Modern Student's Library, published by Messrs. Charles Scribner's Sons, contains *Selections from the Federalist* by Professor John Spencer Bassett (pp. 331). The selections include more than two-thirds of the entire list of articles, prefaced by a good introduction.

The fifth volume of Professor Edward Channing's notable *History of the United States* has been published by The Macmillan Company. It covers the period of transition, 1815 to 1848, and deals with many matters which are of the highest importance to the student of political science,—the urban migration, the Monroe Doctrine, the political seethings of 1824–1828, Jacksonian democracy, nullification and the western land questions. This volume has all the sterling qualities of its four predecessors—accuracy, sense of proportion and lucidity of narrative. In addition, it places many important events of the period in an entirely new setting. Few of the striking political episodes with which the era was filled have been left by Professor Channing just as they were before he set his hand to the task of discussing them. The readjustment of emphasis resulting from the author's study of the source material is in some cases quite noteworthy and should be of great interest to students of American political development.

Messrs. Houghton Mifflin Company are the publishers of Professor Frederic L. Paxson's *Recent History of the United States* (pp. 603). The volume covers the era from 1877 to the present time. It is by no means a mere chronicle of American politics that Professor Paxson gives his readers; on the contrary there is more attention to economic and social development in this volume than in most books of its type. A very substantial proportion of the book, more than one-fourth, is devoted to the course of events since 1914.

The Houghton, Mifflin Company have brought out under the title: *Political Profiles from British Public Life* (pp. 256) a series of sketches of Herbert Sidebotham, the parliamentary correspondent of the London *Times*. The eighteen chapters deal with as many prominent figures in British politics, portraying them sharply but without the virulent partisanship which marked *The Mirrors of Downing Street*. Not least in interest and in permanent value, however, is the discussion of Parliament as an institution, which the author has incorporated in his introduction and his postscript. The former, which is entitled "The Press

Gallery—Fore and Aft," gives an all-too-brief glimpse of the House of Commons at work; the postscript on "The Future of Parliamentary Government" suggests some ways in which parliamentary methods ought to be improved. The author points out that the powers of the Executive have been unduly increased at the expense of Parliament and argues for an increased actual control on the part of the Commons.

A revised edition of Professor C. M. Andrews' *Short History of England* (pp. 506) has been published by Messrs. Allyn & Bacon. The revised narrative comes to the close of 1920. An excellent chapter on "The Government of the British Empire" is added.

The University Tutorial Press has issued a fourth (revised and enlarged) edition of Albert E. Hogan's *Government of the United Kingdom*. The new edition includes the changes which were made during and after the war.

The fourth of a series of small volumes on *Practicas Parlamentarias: las Asambleas Legislativas* has been published by Vicente Pardo Suarez (Habana, Rambla Boñza y C^{a}, pp. 250). This volume deals with *El uso de la palabra y la disciplina*, and after brief discussions of methods in the various countries of Europe and America, there is a short summary on legislative methods and the limitation of debate.

Professor E. A. Ross's *Russian Bolshevik Revolution* (Century Co., pp. 302) is an impartial, objective account of the Russian upheaval from March 1917 to January 1918—the period during which the Kerensky government was set up and toppled over. Professor Ross was in Russia while these things were going on and saw at first hand much of what he writes about. It goes without saying that the book is written in his clear, vigorous, and colorful style.

A useful volume on *Mexico and its Reconstruction*, by Chester Lloyd Jones, former professor of political science in the University of Wisconsin, has been published by D. Appleton and Company (pp. 330). In addition to chapters on population and economic problems, this contains three chapters on the government of Mexico, dealing with the executive government, elections, and the state and local governments; and also contains chapters on colonization, foreigners in Mexico and Mexican-American relations.

Dr. Fred Wilbur Powell has published a small book on the *Railroads of Mexico* (The Stratford Company, pp. 226). This is in three parts; the first dealing with the conditions of the present and the period following the Diaz régime; the second giving an outline survey of the transportation history of Mexico, and the third contains one chapter on relations with the government and another on results, political and economic. There is an extended bibliography and a brief index.

Walter Flavius McCaleb, sometime lecturer in money and banking at Columbia University, and author of *Present and Past Banking in Mexico*, has published through Harper and Brothers a book on *The Public Finances of Mexico* (pp. xiii, 268). Mr. McCaleb has gathered most of his material first hand by a study of archives, manuscripts, and financial reports and by personal interviews with public officials, bankers and others familiar with the subject. The author has developed his account historically, beginning with the finances under the Spanish régime, carrying them on down through the periods of Santa Anna, the Mexican War, and French intervention to the rule of Diaz, who was able to produce some degree of order out of the chaos which had existed up to that time. In conclusion, Mr. McCaleb points out the great disorder into which the fiscal system of Mexico has fallen under Huerta and Carranza, suggests certain remedies for present conditions and makes forecasts as to the future.

A. C. Wiprud, vice-president of the Federal Land Bank of St. Paul has written an account of *The Federal Farm Loan System in Operation* (Harper and Brothers, pp. xix, 280.) to which William G. McAdoo, former secretary of the treasury, has contributed an introduction. This book includes an excellent account of the federal farm loan system, the methods of financing and the various kinds of bonds that are issued. A clear and concise description is also given of the procedure according to which loans are made to the farmer and the advantages of the scheme especially to the small farmer. The author is of the opinion that the federal farm loan system will go far toward solving the economic and social problems of our rural communities and that it will play an important part in checking the present cityward trend of population. About half of the book is given over to an appendix containing the text of the Federal Farm Loan Act carefully digested and indexed, and the utility of the work is enhanced by a seven page bibliography on rural credits and related subjects.

A volume which deserves attention at this time because of the importance of the subject matter is *The American Railway Problem* (The Century Company, pp. 474.) by I. Leo Sharfman of the University of Michigan. The author first traces briefly the history of railroads and of railroad regulation in this country prior to 1914. The remainder of the book provides a thorough analysis of the railroad problem as it presents itself today. The conditions and results of federal control and such questions as railroad nationalization, unification of lines, rates and financial returns, labor and the continuity of service, the Transportation Act of 1920, and the adjustments which accompanied the restoration of railroad properties to private management are set forth in detail. Public regulation is regarded as the best policy, but Professor Sharfman believes that the government must adopt a less restrictive program and allow a reasonable degree of independence in management if private ownership is to be continued.

The title *Is America Safe for Democracy*, by William McDougall (Scribners, pp. 218) does not give an accurate clue to the contents of this book, which contains six lectures on "Anthropology and History" delivered by the author at the Lowell Institute in 1920. The main argument of the volume is based upon the evidence adduced by the author to prove "that the upper social strata as compared with the lower, contain a large proportion of persons of superior natural endowments." His conclusion is that the great condition of the decline of any civilization is the inadequacy of the qualities of the people who are the bearers of it.

Paul Kester's *Conservative Democracy* (Bobbs-Merrill, pp. 82) is an endeavor to contrast socialism with democracy, in order that their relative merits may be clearly brought out. The author finds that democracy makes much the better showing. The discussion is simple and readable.

Economic history of a somewhat new type is embodied in Isaac Lippincott's *Economic Development of the United States.* (Appletons, pp. 691). The plan of the book is such that not only does the author trace the developments in each particular field of industry but he carries along the continuous and related growth in other fields. Particular attention is given to the newer features of economic development, such as the growth of organized markets, the new methods of business

management, the broadening of commercial education, and so on. The references at the end of each chapter have been selected with good judgment.

Henry Holt and Company are the publishers of Thurmin W. Van Metre's *Economic History of the United States* (pp. 672). The book contains a survey of American economic development from the period of discovery and exploration down to the present day. The material is skilfully arranged and the narrative is interestingly written. As a text for use in college courses this volume is sure to be of service.

Ginn and Company have brought out a new edition of Professor Joseph French Johnson's *Money and Currency* (pp. 425), a book which many teachers have found very useful during the past fifteen years. The new edition contains an analysis of the federal reserve system and provides space in the appendices for some interesting statistical tables.

A school text on *Economic Civics* (Allyn & Bacon, pp. 331) by R. O. Hughes is "the result of a conviction that an understanding of elementary economic principles is necessary to good citizenship." Like the same author's earlier book on *Community Civics* the book is well put together and written in teachable form.

The Philosophy of Citizenship by E. M. White (Macmillan, pp. 119) is about what its title implies—a general survey of the fundamentals of citizenship and the chief social ideas. The author, who is a lecturer on civics for the London County Council believes that the range of his subject "extends outwards" from the family to the commonwealth of nations. He repeats, as an appropriate motto for the teacher and student of civics, the aphorism of Terence: *Homo sum; humanum nihil a me alienum puto.*

The bureau of extension of the University of North Carolina has issued a bulletin by Howard W. Odum on *Community and Government* (pp. 106) which is intended to serve as a manual for teachers of government and citizenship in the public schools of that state.

A volume on *Rural Organization* (pp. 250) by Professor Walter Burr of the Kansas state agricultural college is included in the recent list of the Macmillan Company. It deals, not only with rural organization and institutions, but also with such topics as rural marketing, transport, finance, education and sanitation.

The Short Constitution, by Judge Martin J. Wade and Professor William F. Russell (American Citizen Publishing Co.; Iowa City, pp. 228) in an elementary book designed for use in Americanization work. It is in large part a simple presentation of the federal Constitution, and particularly of the guaranties contained in the bill of rights.

F. M. Taylor of the University of Michigan has revised his *Principles of Economics* (The Roland Press, pp. 577) so as to bring it down to date. The most important changes are in regard to the prices of primary factors.

A syllabus intended to accompany Carlton J. H. Hayes' two volumes, *A Political and Social History of Modern Europe*, has been prepared by Edward Meade Earle, under the title of *An Outline of Modern History* (The Macmillan Co., pp. x, 166). Helpful suggestions in regard to methods of study, note-taking, and the writing of historical essays are given and the book also contains a dozen or more selected map studies.

The Carnegie Foundation for the Advancement of Teaching has issued a study on *Training for the Public Profession of the Law* by Alfred Z. Reed (pp. xviii, 498). The work is treated historically and is divided into eight parts. Part I is in the nature of a general summary describing briefly the comparative development of the law and the legal profession in England, Canada and the United States. Following this, the other parts of the study contain a detailed account of the origin and history of law schools in the United States, the evolution of the law school curriculum and of law school methods, the origin and history of bar associations, recent tendencies and a criticism of the present methods of legal education.

Prices and Wages in the United Kingdom, 1914–1920, by Arthur L. Bowley (Oxford: The Clarendon Press, pp. xx, 228), describes the movements in prices and rates of wages in the United Kingdom from the beginning of the war to the summer of 1920. This is one of the series planned by the Carnegie Endowment for International Peace covering the economic and social history of the World War. The general editor of the series is Dr. James T. Shotwell. The work is a vast undertaking—about one hundred monographs are already planned and there must be many more to follow since there remain the problems of Germany yet to be confronted. The writers will all be expected to adopt a

purely scentific attitude and to show no national bias. Never before has the story of a great war been covered in this way, and the library to be created will have unique value. A. B. Keith's *War Government of the British Dominions* and J. A. Salter's *Allied Shipping Control* which have been reviewed at length in this REVIEW also belong to this series.

Ye Olden Blue Laws, by Gustavus Myers (The Century Company, pp. 274), is a careful and amusing account of the blue laws of colonial days. Mr. Myers never fails to point out that the blue laws did not work and that they were more honored in the breach than the observance; nor can the reader fail to perceive that the author disapproves of all blue laws and that he hopes that those now on our statute books and those that may be put there may meet the same fate as those which he describes.

Lord Askwith's *Industrial Problems and Disputes* (Harcourt, Brace and Company, pp. x, 494) will interest more readers than those concerned with labor problems or industrial history. In his position of Chief Industrial Commissioner, settling the most important British labor disputes of the last twenty years, the author has first hand knowledge of important political developments, especially the extension of government functions. He declares that the Asquith and Lloyd George governments had no labor policy, and would have the interference of the politician in industrial struggles rigidly curtailed.

Industrial Government, by John R. Commons and other members of the department of economics of the University of Wisconsin, published by the Macmillan Company (pp. 423) is the result of an empirical study of the relations of employers and employees in selected American industrial establishments. The first part of the volume contains reports on eighteen of the thirty plants visited, and the remaining five chapters give the investigator's own observations or inferences.

A volume on *Principles of Comparative Economics* has been published by Radhakamal Mukerjee, professor of economics and sociology at Lucknow University (P. S. King & Son, pp. 336) with a preface by Senator Raphael-Georges Levy. This differs from the usual works on economics in the emphasis laid on the study of regional factors and on relativity in economic theory.

What is Socialism? by James Edward Le Rossignol (New York: Thomas Y. Crowell Co., pp. x, 267) presents a searching arraignment of socialism as founded on the doctrines of Karl Marx and is intended as an antidote to the arguments and conclusions of socialist writers and workers. The author refutes the idea that there is a "scientific socialism." He is of the opinion that socialism as a system of thought "with all its plausibility and apparent consistency, is a mere caricature of the industrial world as it really is," and considered as a form of actual government it is "a highly imaginary scheme of social organization, which, socialists believe, would be a panacea for most, if not all, the ills that flesh is heir to." The author has a manner of presenting material in an interesting way which has enabled him to make his book readable throughout. Taken as a whole it is one of the best books that has appeared on this controversial subject.

In *The Larger Socialism*, by Bertram Benedict (The Macmillan Company, pp. 243), the present Socialist movement is indicted on the ground that it puts too much emphasis upon material welfare to the neglect of the loftier structures of culture which should be built upon such a foundation. "A Socialist state must ask, 'What kind of a man is Jones?' far more anxiously than it will have previously asked 'How much does Jones earn?' " This, writes Mr. Benedict, is a non-Marxian point of view which the Socialist Party of America should espouse.

A summary of the laws and divisions relating to the *Taxation of Federal, State and Municipal Bonds* (pp. 115) has been compiled by John H. Hoffman and David M. Wood of the New York bar (printed by the authors, 1619 Equitable Building, New York). While intended, in the main, as a guide to investors, the compilation will prove useful to students of public finance as well.

Students of public finance and state government will find the monograph on *State Taxation of Personal Incomes* by Alzada Comstock in the Columbia University *Studies in History, Economics and Public Law* (New York, 1921, pp. 246) of more than passing interest. The study traces the evolution of the state income tax and describes in more or less detail the general features and workings of the system in certain states such as Wisconsin, Massachusetts, New York, Missouri, Dela-

ware and North Dakota. Some of the more important problems of administration are given special consideration as rates of taxation, exemptions, double taxation and the distribution of proceeds between the state and local governments. It is the opinion of the author that under "financial conditions of the present the modern income tax must be regarded as one of the most productive and one of the most satisfactory sources of state revenue."

Thorstein Veblen has reprinted from the *Dial* a series of articles dealing with the American industrial situation, giving them the title: *The Engineers and the Price System* (B. W. Huebsch, pp. 169). The articles deal with such topics as sabotage in industry, the dangers to the existing economic organization and the chances of a revolutionary overturn.

In a readable small volume entitled *What Japan Wants* (Thomas Y. Crowell Company, pp. 154), Professor Yoshi S. Kuno of the University of California sets forth the ambitions of Japan, at home and abroad, as the author understands them. The most striking chapter of the book is the opening discussion which deals with Japanese-American relations.

A study of *Japan and the California Problem*, by T. Iyenaga and K. Sato (pp. 249), has been published by Messrs. G. P. Putnam's Sons. The book deals largely with Japanese immigration and sets forth a series of recommendations for the adjustment of present difficulties. The appendices contain many useful tables and documents together with an exhaustive bibliography of the subject.

The latest volume in the *Makers of the Nineteenth Century*, published by Messrs. Henry Holt and Co., is a life of *Moltke* by Col. F. E. Whitton (pp. 319). A large part of the book, quite naturally, is devoted to the campaigns of 1866 and 1870, but Moltke's earlier and later years are not neglected. Col. Whitton is a sympathetic biographer, on the whole, but he is no hero-worshipper. The book is written in readable vein although the temptation to load the narrative with details has not always been resisted.

The *Correspondence of Sir John MacDonald*, sometime Prime Minister of Canada, has been published by Messrs. Doubleday, Page and Co., under the editorship of Sir Joseph Pope (pp. 502). Rarely has a

personage of such distinguished station left a more complete record of his activities than this Scottish-Canadian bequeathed to posterity. He was a prolific writer of letters; and he received as many as he sent. The correspondence covers a long period of active service and throws many interesting sidelights upon the course of Canadian political development during the second half of the nineteenth century. The editing has been admirably done.

The Reminiscences of a Raconteur by George H. Ham (Musson Book Co., Toronto, pp. 330) is a readable volume dealing with a wide variety of topics from Canadian politics to railroad building. It contains a generous assortment of anecdotes, and stories old and new, about politics and politicians on both sides of the northern border.

The first volume of *A History of the Canadian Bank of Commerce* by Victor Ross, has been issued by the Oxford University Press (pp. 516). It is a good deal more than the history of a single bank, a generous portion of the volume being devoted to the development of the Canadian banking system in general, especially during the earlier years of the nineteenth century.

A useful volume entitled *Great Cities of the United States* (pp. 309), by Gertrude Van Duyn Southworth and Stephen Elliot Kramer is issued by the Iroquois Publishing Co., of Syracuse, N. Y. The book contains a brief historical and descriptive account of thirteen large American cities with emphasis upon their industrial and commercial activities, in other words a series of short municipal biographies. Many interesting illustrations accompany the text.

RECENT PUBLICATIONS OF POLITICAL INTEREST

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BY CLARENCE A. BERDAHL
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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